

No. 15280

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United States  
Court of Appeals  
for the Ninth Circuit

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MILES H. ROBINSON,

Appellant,

vs.

R. W. STEVENS, et al.,

Appellees.

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Transcript of Record  
In Four Volumes

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Volume IV  
(Pages 1267 to 1669)

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PAUL P. O'BRIEN, C

Appeal from the United States District Court for the  
Eastern District of Washington,  
Southern Division.

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(Testimony of Noel B. Edwards.)

Q. Did you happen to be present at the meeting of October eleventh when your father-in-law made his complaint to the board of trustees?

A. Is that the one that took place in Dr. Ralston's office? [1884] Is that the one you are referring to?

Q. No; that was the meeting of November 21, I believe. This was a prior one.

A. Where was that meeting taking place?

Q. At the medical bureau office on the eleventh of October.

A. I don't think I was. I'm pretty sure I wasn't.

Q. Well, to get to the point, you mentioned a moment ago that the hearing before the trustees of the Walla Walla Society on the twenty-first of November, 1950, you did, in effect, state to the trustees that Dr. Robinson had not ever told you that Tom Brooks had syphilis, didn't you?

A. That was the meeting in St. Mary's Hospital? I can't get my dates.

Q. This was the meeting in Dr. Ralston's office. Perhaps it will refresh your memory if I read briefly from the record of that proceeding on the twenty-first of November which is Plaintiff's Exhibit No. 242.

Quoting from Dr. Robinson's statements:

"I have never told Mr. Edwards over the phone or at any other time that his father-in-law or his mother-in-law had syphilis, but I did say that there is a disease and I think I used the word 'virus' in

(Testimony of Noel B. Edwards.)

your [1885] father-in-law and mother-in-law, which is serious and has serious consequence to them because your father-in-law is not taking treatment and it might be that their children might have it.

“Mr. Edwards: I will concede to that statement of Dr. Robinson.”

A. That is correct.

Q. (Reading continued):

“Mr. Brooks: What was that?”

“Mr. Edwards: I said I would concede to the statement of Dr. Robinson that he did not use the word ‘syphilis.’”

Was that your testimony at that time?

A. That is correct.

Q. And now, getting back to this week end of October 7th and 8th, Mr. Edwards, did you listen in on certain telephone conversations between Mr. Brooks and Dr. Robinson?

A. Yes, I listened in on an extension line that my father-in-law had in his bedroom.

Q. When?

A. On the Sunday morning approximately around about 11:00 o'clock or thereabouts. [1886]

Q. Was that the call——

A. Mr. Brooks made to Dr. Robinson.

Q. Was that the only call you listened in on?

A. That was the only one, yes.

Q. To your knowledge, was Dr. Robinson aware that you were listening in?

A. To my knowledge, no.

(Testimony of Noel B. Edwards.)

Q. Incidentally, Mr. Edwards, who was it that requested you to appear at the meeting in St. Mary's Hospital on the twenty-second of May, 1951?

A. I couldn't tell you now.

Q. Do you have any idea?

A. It might have been Mr. Fullerton, I may have received a letter, or it might have been by my father-in-law; I just don't know.

Q. Were you in fact requested to appear at that meeting of May 22, 1951, at the St. Mary's Hospital?

A. If I was there I daresay I was requested to appear. Otherwise, I wouldn't have known about it.

Q. Well, don't you recall any conversation with anyone in respect to your appearing there?

A. Not right offhand, I can't recall.

Q. Could it have been Mr. Fullerton?

A. Could have been.

Q. Could it have been Dr. Tompkins? [1887]

A. Dr. Tompkins, up until this hearing, I didn't even know the gentleman.

Q. Whoever communicated with you and requested that you be there, did they discuss with you what you testified to that night?

A. Not to my knowledge. I don't recall any discussion whatsoever.

Q. Well, do you recall being there?

A. I recall being in the basement of St. Mary's Hospital. Yes.

Q. At a meeting of the medical society?

A. There was a meeting being held there.

(Testimony of Noel B. Edwards.)

Whether I got called at that time or not, I think I did.

Q. Just tell me what occurred that night from the time——

A. I can't recall just what happened. I can remember being downstairs on the outside and whether I got called in or not I just can't recall. I think I did.

Q. You think you did?

A. But if I did, what transpired and what was said and what wasn't said, I don't know.

Q. Who was with you? Was Tom Brooks with you?

A. I couldn't even tell you that. He wasn't with me, no.

Q. Did you see him there? [1888]

A. I think my memory was joggled by earlier testimony in this case that Mr. Brooks did come downstairs after visiting a friend of his upstairs.

Q. Had you told Mr. Brooks you were going to be there?      A. That I couldn't tell you.

Q. Was Mr. Fullerton there with you?

A. That I couldn't tell you.

Q. Did you see Dr. Robinson there?

A. I couldn't even answer that question.

Q. You do recall, however, you went into the meeting?

A. I recall being in the basement of St. Mary's Hospital and undoubtedly I was in the meeting, I don't recall.

Q. Your memory is a complete blank?



(Testimony of Noel B. Edwards.)

A. As far as that is concerned, yes. I have, as is well known, a notorious memory. I have lived up until not so long ago just from day to day and occurrences that come along didn't mean one thing or another to me.

Q. You say you have a very poor memory?

A. I always have had. As a matter of fact, I am recognized for that.

The Court: What was that last remark?

A. I am recognized for having a very poor memory, your Honor.

The Court: Oh. [1889]

Q. (By Mr. McNichols): Did you tell the officials of the society during these meetings that you have a very poor memory?      A. I doubt it.

Q. Did the matter ever come up?

A. Because at that time, things were comparatively new to me. This is five years later, six years later, I'm afraid a lot has transpired, interceded between since then that I don't recall.

Q. Well, in any event, you do recall at the November 21 hearing conceding to the board of trustees that Dr. Robinson never told you that your father-in-law was suffering from syphilis?

A. I conceded to that, yes.

Q. And is that a true statement?

A. That is a true statement. I might add there, though, whether he used "virus" or "disease" or just what he used, one didn't have to be an over-intelligent sort of a person to derive what he was getting at.

(Testimony of Noel B. Edwards.)

Q. And the question which I asked of you a few minutes ago [1892] with respect to the statements you made conceding the truth of Dr. Robinson's statement, that answer is a true statement, is it not?

A. I think that is what I said.

Q. That Dr. Robinson had at no time used that term "syphilis" in talking to you?

A. I conceded that point.

Q. Do you concede that now?

A. I will concede that now. To the best of my recollection, yes.

Mr. McNichols: Those are all the questions I have of this witness.

Mr. Kimball: No questions.

The Court: That is all then, Mr. Edwards.

A. Thank you, sir.

(Witness excused.)

Mr. Sembower: Your Honor, I would like to read into the record at this time the written interrogatories submitted to George F. Lull, answered by him in Chicago, March 19, 1956. [1893]

\* \* \*

SAM R. PAGE

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Sam R. Page.

Q. And what is your address?

A. My home address?

Q. Yes, and your office address, if you please.

A. My home address is 1205 University. My office address is 120 East Birch.

Q. And what is your profession?

A. I am a physician and surgeon.

Q. Do you have any specialties in connection with the practice of your profession, Dr. Page?

A. No, sir.

Q. What official positions have you held in the society, The Walla Walla Valley Medical Society, since 1949?

A. I was president of the society in 1950, I believe.

Q. Any other positions?                   A. I think not.

Q. Were you a member of the board of trustees?

A. Yes, I was ex officio member at the time I was president and then the following year an ex officio member as a [1894] past president.

Q. Have you held any positions with the Washington State Medical Association?                   A. No, sir.

(Testimony of Sam R. Page.)

Q. Have you held any positions with the Walla Walla Valley Medical Service Bureau?

A. Not since that time.

Q. Did you hold a position at that time in the bureau?

A. No—pardon me just a minute. I believe that there was—I think I was an ex officio member of the bureau as the result of my being president of the medical society.

Q. Do you remember what that position would be? Would it be a member of the board, would that be the position you held?

A. I think that is correct.

Q. Is the president of the society always a member of the board of the bureau, if you recall?

A. If my memory serves me, it was during the time I was president.

Q. Now, you have been a member of the bureau itself for some time, I suppose? A. Yes, sir.

Q. How long would that be?

A. Approximately—well, since I came to Walla Walla, roughly twenty years ago. [1895]

Q. I believe that you stated on your deposition in this case that you derive, oh, an estimation of 10 to 15 per cent of your income from bureau cases, is that correct?

A. I remember that deposition and I avoided trying to give very definite and specific answer, but it was an estimate but I made it quite clear, I thought, that it was purely an estimate.

Q. Yes. I think your deposition reflects that,

(Testimony of Sam R. Page.)

that it was just an estimate. Did you have an opportunity since the deposition to look into the matter more specifically?

A. I had an opportunity, but I didn't do it.

Q. So that so far as you are able, all you can do is give an estimate, which would be approximately the same today as it was at the deposition?

A. That is correct.

Q. You say you practiced medicine here for about twenty years. I suppose you belonged to the society all that time?

A. Yes, sir.

Q. And the society was incorporated some years ago, but that would mean that you belonged to the predecessor group?

A. That is correct.

Q. Which was known as the society then?

A. Right. [1896]

Q. I believe, Dr. Page, that you participated in most of the meetings that seemed to be significant in the matter before us here, and I would like to trace through those to see if you were present.

First, I refer to the August 29th meeting, 1950, of the bureau at which Dr. Robinson's resignation was accepted. Do you recall being present at that meeting?

A. No, I do not. I may have been, but I do not recall.

Q. Well, then, there was the meeting on October the 11th, 1950, the so-called extraordinary meeting of trustees and grievance committee members on the date that Mr. Tom Brooks' complaint was taken down. You recall that meeting, of course?

(Testimony of Sam R. Page.)

A. Yes, sir, I do.

Q. I believe you called that meeting?

A. Yes, sir.

Q. Then on November the 9th a trustees' meeting was held after the regular meeting of the society which considered the matter of the Brooks' complaint and decided to go ahead with it. Do you recall that meeting?

A. I think that I do, but could you tell me where that meeting was held? It might help a little, I am a little confused. There are so many meetings at that time it makes it a little difficult.

Q. I am not at all surprised at that. That was held at [1897] the Grand Hotel?

A. Yes, I recall that meeting.

Q. Now, before proceeding with the other meetings, so we will keep this somewhat in chronological order, I would like to ask you if the local society's grievance committee came into existence during your presidency? A. Yes, sir.

Q. Was the creation of this grievance committee a project of yours, or what was the origin of the idea of having a grievance committee?

A. Well, it was no project of mine, it was voted on favorably by the society that we have a grievance committee.

Q. When did the matter of a grievance committee first come to your attention, if you recall?

A. A few weeks before it actually was voted on by the society. There was some comment among

(Testimony of Sam R. Page.)

some members in regard to the organization and the necessity of a grievance committee.

Q. And in what connection did that arise?

A. I don't really know, from my own information, specifically, excepting the meeting at which the grievance committee was authorized and the chairman was given authority to appoint members.

Q. When was that meeting?

A. I can't give you the date now. The record undoubtedly [1898] will show.

Q. Would that have been in about April of 1950?

A. It was in the early part of 1950, and I suspect it would be around in that period.

Q. How did the matter come before the society?

A. Pardon?

Mr. Sembower: Will you read the question, please?

(The paragraph was read.)

Mr. Sembower: At that time?

A. Somebody on the floor moved that the society form a grievance committee, or words to that effect.

Q. Do you remember who moved for the creation of the grievance committee?

A. I don't remember specifically. I am impressed that it was Dr. Stevens, who I knew had studied the idea of the grievance committee and seemed to me was the spark plug for the organization of a grievance committee.

Q. How did you know that he had made a study of grievance committees?

(Testimony of Sam R. Page.)

Q. And did he consent?

A. With some reluctance, yes.

Q. And did he, in fact, serve in that capacity?

A. I do not know.

Q. Well, then, as to the other three members, did you notify them of their appointment?

A. Yes.

Q. In what manner did you do it?

A. By word of mouth.

Q. And did you have any particular qualifications in mind for the members of the committee?

A. Yes.

Q. What were they?

A. I particularly wanted Dr. Stevens, since Dr. Lyman had declined to serve as chairman. I wanted Dr. Stevens as chairman because he had made a considerable study of the grievance committee recommendation that came through with quite some quantity of literature from the AMA and perhaps in the Northwest Medicine.

Q. Any other members, as such?

A. I think I appointed Dr. Yengling. [1902]

Q. Yes.

A. At that time I couldn't say why I specifically appointed Dr. Yengling. In the appointment of the third member of the committee, Dr. Bohlman, I had previously discussed with another physician who was a Seventh Day Adventist, because there was a large group and I felt that that group should somehow be represented. I had asked a Dr. Taylor, as a matter of fact, if he would serve, since he was



(Testimony of Sam R. Page.)

taking quite an active part in the work. He declined to serve in that capacity unless someone else could not be available. He suggested Dr. Bohlman and it met with my thought, and I talked with Dr. Bohlman and he accepted.

Q. Well, now, Dr. Page, you mentioned a moment ago that you had been practicing medicine here for some twenty years. Were you aware at the time that you considered Dr. Stevens for this appointment that he himself had been involved in a disciplinary action by the society?

A. I think I was. You said that he had been involved?

Q. Yes, that he had been.

A. I think I was.

Q. But that didn't concern you in this connection? A. Not a bit.

Q. Now, furthermore, I wonder if you were aware at the time of any controversy or widespread discussion concerning [1903] the eyeglass dispensing situation in the country?

A. Not any—I knew that there was some discussion in general in regard to that matter, but I wasn't actively concerned with it.

Q. Had you seen discussion, editorials, and articles about it in the *Journal of the American Medical Association*, perhaps?

A. I don't know that I did.

Q. Now, Dr. Stevens' practice is in that general area, is it not? A. That is right.

Q. Did it occur to you at all that, shall we say,

(Testimony of Sam R. Page.)

Dr. Stevens might be embarrassed by being chairman of a grievance committee with that particular situation an active one in the profession?

A. No, sir.

Q. Did you consider that at all in connection with his appointment?      A. Not a bit.

Q. Now, let me see if we established the meeting at which you made these appointments. Would it sound possible to you that the appointment might have been made April 19, or somewhere along there, whatever meeting was held then, Dr. Page?

A. I stated awhile ago I didn't know the exact date, but [1904] the appointments were made shortly after the meeting in which the authorization was granted.

Q. And you didn't announce those appointments, did you?      A. No.

Q. Was it in your intention at that time to create a so-called secret grievance committee?

A. No.

Q. What did you have in mind?

A. I felt that that committee had an awfully unpleasant job to do, that anyone they would approach to try to straighten out little problems that would come up would be rather unpleasant, and that there was some publicity either to be made in the newspaper or there had been publicity made in the newspaper and I wanted to avoid embarrassing the members of the committee so that many, many patients with serious complaints or reasonably serious complaints or even certain screwballs that might

(Testimony of Sam R. Page.)

pick up the thought, that they could call individual members and make a complaint, and I felt that they should be protected against that possible condition that might arise.

Q. And, now, did you have any precedent, Dr. Page, for the creation of such a committee but with the withholding of the names of it?

A. No, sir. [1905]

Q. Do you recall any discussion after that meeting about that, Dr. Page?

A. I don't recall any.

Q. Now, the June 20th meeting. The minutes of the special meeting of the Walla Walla Valley Medical Society held at St. Mary's Hospital, carries this entry in the fourth paragraph:

“The Executive Secretary reported on the formation of the grievance committee, stating that the committee had adopted its methods of procedure and that a public announcement of its availability and use had been made in the press. The president was asked for the names of the committee members and ruled that in his opinion the value of the committee would be seriously lessened if the names were announced.”

Now, I wanted to ask you, Dr. Page, if you know to what the Executive Secretary, who I assume is Mr. Fullerton, referred when he said that the committee had adopted its methods of procedure?

A. Well, when I appointed the committee, I named the committee to Mr. Fullerton. Therefore,

(Testimony of Sam R. Page.)

from then on the committee were on their own and I don't—

Q. Mr. Fullerton— [1906] A. Pardon?

Q. Mr. Fullerton did know the names of the members of the committee at that time?

A. Oh, yes.

Q. Well, what I was asking you about, however, was this reference to the rules of procedure. Do you know to what he referred there?

A. No, I had nothing whatever to do with that.

Q. But you are not aware that he had any rules of procedure at that time?

Mr. Rosling: Methods of procedure, counsel?

Mr. Sembower: Methods of procedure.

A. I have no information about that.

Q. No, do you know, Dr. Page, when, as a matter of fact, rules finally were adopted for the conduct of the grievance committee?

A. I recall a meeting at some time later in which there were rules adopted.

Q. When was that, about?

A. I don't remember that.

Q. Would it be soon after, or quite a while after?

A. I simply can't answer the question. I don't remember it.

Q. Well, now, would it refresh your recollection if I suggested that the rules were finally adopted on May 22nd, 1951? [1907]

A. I still don't recall the dates, but if the minutes would show that, that would certainly stand.

(Testimony of Sam R. Page.)

Q. Well, now, when you created this grievance committee, when you appointed this grievance committee, did it occur to you that the constitution might have to be amended to provide for it?

A. Well, I never considered any necessity of it.

Q. Did you consider it at the time? Did you examine the constitution at that time?

A. I didn't, I don't think.

Q. The next entry in the same minutes says:

“Dr. Holmes then moved, seconded by Dr. Moore, that the rulings of the president be referred to the board of trustees as to whether or not the information should be available to the membership of the society. Motion was carried.”

That action refers to the policy you had suggested of not disclosing the names?

A. That is correct.

Q. Did you disclose the name of Dr. Stevens on this occasion?      A. On what occasion?

Q. At the occasion of this meeting, or did you withhold all the names?

A. No, I didn't disclose the name at all. [1908]

Q. Now, I would like to show you, Dr. Page, the minutes of the meeting of the board of trustees of the Walla Walla Valley Medical Society held July 18, 1950, at the Marcus Whitman Hotel, and I would like to call your attention to the minutes here where they recite, in the fifth line:

“Dr. Keyes moved, seconded by Dr. Lange, that the rulings of the Chair be confirmed. Motion carried.”

(Testimony of Sam R. Page.)

And this relates to the motion of Dr. Holmes, made at the society meeting of June 20th to refer the ruling of the Chair that the names of the membership of the grievance committee would not be made available to the membership of the society to the board of trustees for decision.

But now it appears that this sentence, "Dr. Keyes moved," is in darker type, and would that appear to you to be an addition to those minutes?

A. I'm sure it isn't an addition.

Q. Do you recall that that occurred at the time?

A. Yes, sir.

Q. Do you know who made that entry there?

A. No, I have no information.

Q. Have you ever seen this before to your recollection?      A. No, sir. [1909]

Q. In line with your testimony just now, I find in your deposition, Dr. Page, Page 27, the statement:

"No, I don't think so. I think I should clarify this, that the grievance committee was an organization and I never had any real contact with the grievance committee in the normal routine manner."

Do you recall making that statement?

A. Well, I don't recall specifically making it, but the statement is correct.

Q. Yes, and, of course, you did appoint them, did you not, then have any further contact with this committee?

A. I had no more contact with them.

(Testimony of Sam R. Page.)

Q. You didn't require them to report back to you of any of the actions they were taking?

A. No, sir.

Q. You just let them go on their own?

A. That is correct.

Q. Well, now, Dr. Page, as a matter of fact, the situation got pretty much out of hand, did it not, with respect to this committee?

A. I would say no; I don't know of any way the situation got out of hand.

Q. How many grievances did the committee receive, if you know? [1910]

A. I don't know.

Q. It did, of course, receive—at least Dr. Stevens received a complaint concerning Dr. Robinson, did he not?

A. I am sure that is correct because there was quite a bit of communication in regard to that matter.

Q. Well, now, Dr. Page, would you say that Dr. Robinson's criticism or opposition to this committee disrupted its activities?

A. I couldn't answer that question. I had no contact with this committee after I had appointed them, except as was generally known such as these communications that we just referred to. The committee had no reason to report to me and I didn't require it and I have no more information about that.

Q. Well, Dr. Page, you, however, did assemble the extraordinary meeting of the trustees and grievance committee members, did you not, on October

(Testimony of Sam R. Page.)

the 11th, 1950?           A. Yes, sir.

Q. Now, did you regard that as a grievance committee activity?

A. Not really. Well, all right, that is the answer, then.

Q. Why did you regard this as a different matter from the grievance committee, if I am construing your last answer correctly?

A. Yes. Well, Mr. Fullerton had contacted me and gave me the highlights of what was reported to be a report of Tom Brooks, [1911] which appeared to me as an extremely serious situation, if true. The grievance committee was not set up, as I understood it, to take care of serious matters.

Q. How——

The Court: Have you finished your answer?

Mr. Sembower: Yes, excuse me.

The Court: I think that is all. I didn't know whether you had finished.

Q. (By Mr. Sembower): However, it ostensibly, apparently, had handled a matter involving a so-called Edwards complaint, had it not, prior to that, prior to this October 11th meeting?

A. Yes, that is a matter, we knew that at that time.

Q. How did you know that?

A. I don't know whether I had gotten a letter in regard to that or whether there was some rather general conversation. I don't know how I knew that, I don't remember now.

Q. Did you know whether Dr. Stevens in con-



(Testimony of Sam R. Page.)

nection with the Edwards matter had ever called a meeting of his committee?

A. I don't know except testimony which has been given here and at the time. All these proceedings that took place about that time, that information was certainly available.

Q. Would it have caused you to be concerned as president of the society if you had known the chairman had handled a grievance by simply speaking with one member of the [1912] committee informally and not holding a meeting, as such, and then accosting a member of the society on the street and discussed it with him there?

A. You say, would it cause me concern?

Q. Yes.

A. I would congratulate him on trying to handle a relatively small matter in that manner.

Q. That is, in other words, you didn't have in mind that the committee to handle matters would convene as a committee necessarily?

A. If it would become necessary, perhaps, yes, but certainly on some small matter, I would think that the chairman would many times be able to handle little problems without having the full committee present.

Q. Well, little problems, Dr. Page, have a way of growing into big problems though, do they not?

A. That is very definitely evident.

Q. Would it have caused you concern as the president if you had known that the chairman of the grievance committee, having consulted with only

(Testimony of Sam R. Page.)

one member and then accosted the member on the street, the member of the society on the street, who I believe it has been testified on that occasion learned for the first time that the chairman was functioning as chairman, and then had written directly to a patient he didn't need to pay a bill? Would that [1913] have caused you concern as president of the society?

A. I don't believe it would.

Q. You think that would be a proper functioning for the committee as you conceived of it?

A. Does this presume that I feel that this particular case, that this patient was told he didn't have to pay a bill?

Mr. Tuttle: That is what he assumed, yes.

Mr. Sembower: Yes.

A. I am just wondering if I am to resume that.

Q. Yes, that is true.

A. I think I would probably be somewhat concerned then. I am not sure, however, that—I would have to know what the whole facts were, and I would have to be in on it at the time before I could answer your question very well.

Q. Would it make any difference to you whether the bill was large or small?

A. I don't think it would make any.

Q. Well, now, Dr. Page, with reference to this meeting of October the 11th, 1950, I believe you testified that Mr. Fullerton had gotten in touch with you. Was that by telephone?

A. That was by telephone.

(Testimony of Sam R. Page.)

Q. Did you have any conversation with him other than the telephone call? [1914]      A. No.

Q. Did Mr. Fullerton on that occasion tell you that he had had any contact with Tom Brooks in any other way than by a telephone call?      A. No.

Q. What was it about that call from Mr. Fullerton that impressed you sufficiently to assemble all the top men of your group there?

A. If this statement that Tom Brooks was supposed to have made was true, then an extremely serious situation had arisen which seemed to me was in violation of the principles of ethics, and I felt that type of a situation should be heard by the board of trustees.

Q. Rather than the grievance committee, as such?

A. Well, not knowing the entire facts on it, I did think it was wise to ask the grievance committee to attend the meeting.

Q. But you didn't think this was a matter you would want to refer to the grievance committee?

A. Well, I would have no business referring it to the grievance committee, anyway, but it didn't seem to me the type of complaint, if true, that the grievance committee would normally handle.

Q. Why was it different?

A. This is a serious charge. The grievance committee was [1915] organized to handle the minor complaints.

Q. Dr. Page, did you know Tom Brooks?

A. Not at that time.

Q. You did later become acquainted with him?

(Testimony of Sam R. Page.)

A. Yes.

Q. In what connection did you later become acquainted with him?

A. I was in some meetings in which he was present.

Q. What were those meetings?

A. Well, the first meeting was when he came and discussed with the group we were just referring to the complaint that he had made.

Q. That is, you mean these were meetings of the society, is that correct?

A. This was a meeting of the executive committee and the grievance committee.

Q. Had you met him in any other way?

A. No.

Q. Had you met him at that time? A. No.

Q. Had you met him socially? A. No.

Q. Mr. Brooks testified that he was an investigator for an insurance company from 1948 to 1952, oh I believe to the present. Had he investigated any cases that you had been [1916] in in which he had gotten in touch with you? A. No.

Q. Dr. Page, do you recall Dr. Robinson going to your house on October the 10th, 1950?

A. Dr. Robinson was at my home one time and it fits in about that time.

Q. Do you remember the conversation you had there with him? A. Parts of it.

Q. Was there anyone else present at the time?

A. No.

Q. On that occasion, Dr. Robinson asked you to

(Testimony of Sam R. Page.)

inform him of the names of the members of the grievance committee, did he not?

A. I don't remember.

Q. Do you remember any parts of the conversation? A. Yes.

Q. Did he discuss the Edwards complaint with you? A. I don't know.

Q. What do you recall about the conversation?

A. The most outstanding thing that I recall was that Dr. Robinson said, "I am going to sue somebody. I don't know who it is going to be, but I am going to sue somebody. I think it will be Dr. Stevens, but I am still going to sue somebody."

Q. Now, this was on October the 10th about 1950? [1917]

A. If it was my home, that was the only time Dr. Robinson was there.

Q. Did you tell him on that occasion who the members of the grievance committee were?

A. I don't think so.

Q. Now, that was the same date, however, was it not, Dr. Page, that Tom Brooks had been notified to come to the special meeting which was going to be held the next night? A. I don't know.

Q. Did you discuss with Dr. Robinson at that time anything about the meeting which was scheduled for the eleventh?

A. I'm sorry that I have to stall a little on this. You talk about the meeting scheduled for the eleventh and there are so many meetings I don't know what meeting you refer to.

(Testimony of Sam R. Page.)

Q. Yes. Well, the meeting, the extraordinary meeting, of the trustees and the board members, as I recall, was held on the eleventh.

A. Well, then, I did not discuss that.

Q. And the night on which Dr. Robinson stopped by your home, I believe, was October the 11th, the night before——

Mr. Rosling: That is counsel's statement as to the date of that meeting, the visit to Dr. Page's home, and Dr. Page has not testified that Dr. Robinson came out on October 10th. [1918]

The Court: No, I don't think he ever has definitely fixed the date.

Mr. Sembower: No, I don't think he has.

The Court: He said, "If October 10th is the day I talked to him, that is what it is, because that is the only time I did," but he has not said it was October the 10th.

Q. (By Mr. Sembower): Do you remember if that meeting was before this evening at which Tom Brooks appeared or was it afterward?

A. I don't remember that.

Q. Now, Dr. Page, at the time you talked with Mr. Fullerton about calling the special meeting, did you ask him if he had made an investigation of this complaint?      A. No.

Q. Did you ask him the extent of his contact with Mr. Brooks relative to the matter?

A. If I didn't ask him, he gave me over the phone the information that Mr. Brooks had called him and Mr. Fullerton reported to me essentially the

(Testimony of Sam R. Page.)

highlights of what Mr. Brooks had reported to Mr. Fullerton. Then Mr. Fullerton gave me the highlights of the report of Mr. Brooks.

Q. And it was on the basis of what Mr. Fullerton told you that you considered this an extremely serious matter?

A. If it were proved to be true, yes.

Q. And then you suggested that he call the particular members [1919] that he did call, is that correct?

A. That is correct.

Q. And those names were selected by you?

A. Well, those names, they represented two groups of people in the medical society, the trustees and the grievance committee.

The Court: We'll take a recess at this point of ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Page, did you receive a copy of Dr. Robinson's letter written August the 11th, I believe it was, 1950, in which he detailed his reasons for criticizing the bureau?

A. I am sure I did. I don't remember specifically now the contents, but I am sure that I received the letter.

Q. Did you read that letter? A. Yes, sir.

Q. What was your reaction to that letter?

A. I didn't agree with his reasons for criticizing, or rather I didn't agree with his criticism.

Q. Did you then later read the letter written by

(Testimony of Sam R. Page.)

Balcom Moore written about September 21st, 1950, in which he answered Dr. Robinson?

A. I don't think so.

Q. Dr. Robinson resigned from the bureau, I think his [1920] resignation was accepted about a week after the eleventh; Do you recall that?

A. Well, I know that his letter—I know that his resignation was accepted, but I don't remember the time and the dates.

Q. Did you think that Dr. Robinson had been co-operative with the bureau?      A. I didn't know.

Q. Did you form any beliefs concerning Dr. Robinson's relationships with the bureau?

A. No.

Q. Were you sorry that he resigned from it?

A. I didn't care one way or the other.

Q. Now, Dr. Page, when Mr. Fullerton called you about his telephone conversation with Tom Brooks and you were considering calling together the meeting that met on the eleventh of October, did you ask Mr. Fullerton if he had taken down a written complaint from Mr. Brooks?

A. No, I didn't ask him.

Q. Did you think it was at all necessary at that time?

A. I had understood at that time that this was to be the written complaint, that he wanted to make his complaint to this particular group, and then when it was made, it would be his official written complaint.

Q. Well, now, Dr. Page, didn't it occur to you



(Testimony of Sam R. Page.)

that possibly this conversation which Mr. Fullerton had maybe had been [1921] with a crank or just a harebrained person that had no significance to what he was saying?

A. The answer to that is no, it didn't occur to me, that Mr. Fullerton apparently was perfectly sincere in his feeling in regard to the matter.

Q. Wouldn't it have been——

A. And not knowing Mr. Brooks, I certainly would not presume that it would be some harebrained crank.

Q. You would presume that it had substance, is that correct?      A. Definitely.

Q. Didn't it occur to you that it would be extremely embarrassing to call together these busy men of importance, doctors here, to talk with some man who is just a voice on the end of a telephone?

A. My answer to that is that it would have been very embarrassing to have a situation of that sort arise reported by the executive secretary and for me to do nothing about it. This meeting was called in the evening and I don't believe the men were so busy that it would jeopardize their practice of medicine to attend that meeting.

Q. Dr. Page, what had been the extent of your contacts with Dr. Robinson prior to this time?

A. No particular contacts except that I would perhaps see him in the hospital and maybe it would be attending meetings that we would have prior to that time. No [1922] particular contact that I can recall.

(Testimony of Sam R. Page.)

Q. Had you been associated with him in the practice of medicine in any way?      A. No.

Q. Any social contacts with him?      A. No.

Q. Did you know anything about his background very much?      A. No.

Q. You had seen him at the society meetings?

A. Yes.

Q. Had he spoken there?

A. Not that I recall.

Q. Had you read any letters that he had written?

A. Well, yes, I think I read all the letters he wrote.

Q. Of course now by this time you did know a little something about how he felt about the grievance committee, did you not?

A. Well, now, what time do you mean? I thought awhile ago you said prior.

Q. No, I am fixing——      A. Well, I'm sorry.

Q. ——on the date of the eleventh, on the date of October the 11th.

A. You said before that time.

Q. Yes, up to that time. [1923]

A. All right. Now, what is your question, please?

Q. My question is, had you read letters from him up to that time? No, I'm sorry. I passed that question. What I meant was to say that you knew by this time how he felt generally about the grievance committee, did you not?

A. I'm not sure of the timing on that. I read the letters that he sent to me, as well as other people,

(Testimony of Sam R. Page.)

and if that time came before this meeting that you refer to, then I knew how he felt in regard to it.

Q. How did you feel in regard to it?

A. In regard——

Q. To the letters. You said, “I know how we felt with regard to the letters.”

A. I felt the letters—you mean the letters in regard to his criticism of the grievance committee?

Q. Well, the letters that you had received up to about this time.

A. I felt he was mistaken in his criticism. I didn't agree with his criticism at all.

Q. Well, now, you said, “I knew how we felt about these letters.” Who else did you mean “we”?

A. I don't think I said that.

Mr. Tuttle: I believe he said “he.”

A. If I did, it was in error.

Mr. Tuttle: He said how he felt. [1924]

A. Pardon?

Mr. Sembower: I don't want to presume on the witness.

Q. My thought was that you had said, “I knew how we felt about it.”

The Court: I think he said “he.”

Mr. Sembower: Did he say “he”?

The Court: I think so. Is that what you intended?

A. Yes.

Q. (By Mr. Sembower): I will ask you, then, had you discussed these letters with other members of the society at all?

A. Officially, you mean?

Q. Officially or unofficially.

(Testimony of Sam R. Page.)

A. Unofficially, I think comments were made about the letters that were written and criticisms that were offered.

Q. What were those criticisms?

The Court: About the criticisms, wasn't it?

A. Yes.

The Court: He said criticism was made.

Mr. Sembower: I'm sorry, I must be sitting in a sound pocket.

The Court: The acoustics are those of a typical old court room.

Q. (By Mr. Sembower): You said about the criticism? A. Yes. [1925]

Q. Well, had you heard any criticisms among the members of the society of these letters?

A. Generally speaking, the members of the society had received, I think, all of these letters, unless there are certain specific letters that he had sent to officers of the society that had not been generally received but generally speaking I think the conversation that would be perhaps in the hall or in the scrub room or what have you was that they were not favorable to his criticisms; that the criticisms were not warranted.

Q. Was it your impression that the belief was that these criticisms, that his criticisms, were negative, not constructive criticisms? What was the reaction?

A. Well, I could give only my individual opinion in regard to that.

Q. What was your own individual opinion?

(Testimony of Sam R. Page.)

A. My individual opinion is that they were not constructive.

Q. Now, as to that meeting of the eleventh, you presided at the meeting?

A. I honestly don't know. I don't know whether—I was present, I think.

Q. Well, it would be natural for you to preside, I suppose, since you called the meeting together, or would Dr. Stevens have presided, or do you know?

A. That meeting was called to hear Mr. Brooks, and I feel in [1926] my own mind we were completely individuals at that time. I can't be technically wrong, I don't have any recollection of that.

Q. You say completely individuals, now was this a constituted meeting of the society or was it a gathering of individuals?

A. Well, it was a meeting of the grievance committee—not the grievance committee.

Q. Well, what would you say the meeting was of?

A. Well, I had a blank just at the moment for this particular committee that represented the society. The board of trustees.

Q. Oh, I see. Well, of course, you heard at this meeting, you heard Tom Brooks' story, did you not?

A. That is right.

Q. Did you hear anybody else at that meeting?

A. No.

Q. And then you arranged for the transcript of that meeting to be written up, is that correct?

A. That is right.

(Testimony of Sam R. Page.)

Q. And then later to be considered at a meeting of the trustees? A. Correct.

Q. Now, the meeting of the trustees was held, I believe, on November the ninth, 1950, at which the purported statement of Tom Brooks was considered. Do you recall, [1927] does that seem reasonable to you? A. I think that is the date.

Q. Did you, Dr. Page, at or about that time, receive a letter from Dr. Robinson relative to the grievance committee?

A. Well, I received several letters, and I don't remember specifically about that.

Q. Let me get that and ask you.

Mr. Rosling: Four hundred twenty-four.

Mr. McNichols: What is the number, Mr. Rosling?

Mr. Rosling: Four hundred twenty-four. Correction, it is thirty-seven.

Mr. Sembower: Yes, I think it is thirty-seven.

Q. I show you, Dr. Page, Plaintiff's Exhibit No. 37 and ask you if you recall seeing this before?

A. I don't want to take the time to read all of this, but I am quite sure that I have seen this before.

Q. Would this be properly described as Dr. Robinson's complaint against the grievance committee?

A. I think so.

Q. Do you remember when you received that?

A. No.

Q. Do you remember when you received this in

(Testimony of Sam R. Page.)

relationship with the meeting of the trustees on November the 9th?

A. I don't remember that. [1928]

Q. Would it help your recollection if I asked you whether you received it before that meeting or after that meeting?

A. No, it wouldn't help. I don't remember the date on that.

Q. Would this refresh your recollection at all? I believe that Dr. Tompkins testified that Mr. Fullerton had in his possession a copy of this letter date stamped received on about the ninth or something like that and the Brooks complaint on the night of the meeting of the ninth. Did you recall that at all?

A. I don't recall this as far as this time is concerned as to the chronological order of this.

Q. Do you recall whether there was any discussion at that meeting of the ninth of the fact that this letter to the board of trustees had been sent out by Dr. Robinson?

A. What transpired at that meeting of the ninth, may I ask?

Q. Well, now, that is the meeting at which Mr. Brooks' complaint was considered by the trustees; that is, it had been taken down, transcribed, and was considered at that time.

Mr. Kimball: Why don't you let him look at the minutes?

Mr. Sembower: Yes.

Q. I'm showing you the minutes of the meeting of, of the special meeting of the board of trustees of

(Testimony of Sam R. Page.)

the Walla Walla Valley Medical Society held at the Grand Hotel [1929] Thursday, November 9, 1950, at 9:15 p.m.

A. All right, now, what is your question?

Q. Well, I wanted to ask you if you recall at this meeting any discussion of Dr. Robinson's complaint against the grievance committee?

A. No, I don't recall any.

Q. I would like to ask you also in connection with this meeting, I notice that the members present include Drs. Page, Tompkins, Keyes, and Ralston, and the others present were Drs. Lyman, Johanneson, Stevens, and Attorney Judd Kimball and C. E. Fullerton.

Now, why were there others present other than the members of the board?

A. Members of the board is not a closed meeting. Any member could attend the meeting without any question, he wouldn't be questioned. This might have been at the time or near when we were having a regular meeting in which other members might have been in the same building. I don't know the answer to your question, but I know that it would be easily understandable that other members of the society would or could attend that meeting.

Q. Could Dr. Robinson have attended this meeting?

A. I think he could.

Q. It seems that I recall that this meeting was held after a regular meeting of the society, is that correct? [1930]

A. I couldn't answer that, I don't know.



(Testimony of Sam R. Page.)

Q. Do you remember how long this meeting lasted?      A. No.

Q. Well, what was taken up at the meeting, Dr. Page? Do you recall that?

A. Yes, the thing that was taken up was the complaint of Tom Brooks.

Q. Yes. Well, now, what action was taken, if you recall, at that meeting with respect to that?

A. It was decided to hold another meeting at which we would invite or require, I believe, Dr. Robinson to come and present his side of the story and to have Tom Brooks come and present his side of the story, and we would go over the pros and the cons of the situation and try to come to some solution as to what disposition to make of it.

Q. Dr. Page, did you know at this time that Mr. Fullerton had five days after the meeting of October the 11th written the state society, Mr. Neill, and asked him for information of operation of the state grievance committee?

A. I don't know whether I knew it at that time or not.

Q. Did you direct Mr. Fullerton to write such a letter?      A. I am not sure.

Q. You may have?

A. Well, I just don't recall. [1931]

Q. Could it have been that you wanted to know what the procedure of the state society was with reference to a grievance committee at this time?

A. Well, I would have wanted to know, yes, but I don't remember whether I had directed Mr. Ful-

(Testimony of Sam R. Page.)

lerton or whether he did it upon his own as the Executive Secretary.

Q. Was there any particular reason, Dr. Page, why the meeting was called? This special meeting was called on the ninth, that you recall.

A. The ninth of what month?

Q. November the 9th.

A. We called that meeting as soon as we conveniently could call it to comply with the bylaws of the society.

Q. Was there a time element in the bylaws in respect to this meeting?

Mr. Rosling: John, will you please make clear whether you are talking about the meeting of November 9th or the meeting of November 21st?

Q. (By Mr. Sembower): Is it clear in your mind we are discussing the meeting of November 9th?

A. Is that the meeting we held at Dr. Ralston's office?

Q. That is the one where you just read the minutes.           A. No.

Q. Oh, you were thinking of the 21st?

A. I was thinking of the one at the later [1932] date.

Q. Oh, well, I wondered why you called this on the ninth?

A. I think we had just at that time or the day or so before that time received the transcript of Mr. Brooks' complaint.

(Testimony of Sam R. Page.)

Q. This meeting actually was called on the spur of the moment, was it not, Dr. Page?

A. I don't—what do you mean the spur of the moment?

Q. Well, I mean you didn't call it any length of time ahead, you just called it right at the moment virtually?

A. I can't answer that question, I don't know.

Q. You don't recall?

A. No, at the moment I don't.

Q. About the transcript, do you know to whom the transcript was delivered?

A. It logically would have been delivered to Mr. Fullerton, but I am not positive.

Q. When did you first see the transcript?

A. I think at this meeting of November the 9th.

Q. You don't recall ever having seen it at any earlier time?      A. I don't recall.

Q. Did you ever talk to Miss Curts about this transcript?      A. I think not.

Q. Did you ever ask her for a copy of this transcript?      A. No.

Q. You are certain you didn't ask her for a copy of this transcript? [1933]

A. You are referring to the transcript when Mr.—

Q. That is on the ninth, yes, the Brooks statement.      A. Made his original complaint?

Q. Yes, that's right.

A. I did not ask her for a copy.

Q. Dr. Page, I have here a return receipt for

(Testimony of Sam R. Page.)

registered letter dated the 8th of November, 1950, and I ask you if you recognize the signature that appears under your name?       A. Yes.

Q. Who is it?       A. It is my secretary.

Mr. Sembower: I ask that this be marked Plaintiff's Exhibit for Identification.

The Clerk: It will be Plaintiff's Exhibit 514 for Identification. Do you want them clipped together?

Mr. Sembower: Yes, clipped together, please.

Q. Dr. Page, does this refresh your recollection that you received a registered letter on the eighth of November containing Dr. Robinson's complaint against the grievance committee?

A. This would indicate that I received a registered letter, but I would have no information from this as to what the contents of the letter was.

Q. I was just asking if that refreshed your recollection? [1934]       A. No. It does not.

Mr. Sembower: I will not introduce this at this time.

Q. Dr. Page, did you at any time doubt Dr. Robinson's diagnosis of the disease in the Brooks family?

A. I had no reason really to be concerned over his accuracy of the diagnosis.

Q. What would be your answer, then, that you did not doubt it—

A. No, I didn't doubt it.

Q. Dr. Page, had you had any meetings before of the trustees at which there was a court reporter present and an attorney and so on, that you recall?

(Testimony of Sam R. Page.)

A. Before this?

Q. Yes, before this.

A. This first meeting when Mr. Brooks was present?

Q. That's right. A. I think not.

Q. Now, Mr. Kimball, the attorney for the society, attended also the meeting of the ninth. Did he customarily attend your meetings? A. No.

Q. Now, then, passing on to the meeting of the twenty-first, Dr. Page, you do recall that meeting?

A. Yes.

Q. What occurred at that meeting? [1935]

A. We are referring to the meeting that was held in Dr. Ralston's office?

Q. I believe so. That was the meeting of the society, was it not?

Mr. Kimball: No, I don't think so.

Q. (By Mr. Sembower): A meeting of the trustees? A. That's right.

Q. Now, Dr. Page, do you recall what occurred on the day before that meeting?

A. Nothing specifically at the moment any more than any other day.

Q. Well, didn't you have a meeting on the day before the twenty-first? A. I don't recall it.

Q. Didn't you have a special meeting on November the 20th at which you considered the petition or the signed slips which Dr. Robinson had collected from various members of the society who wanted a special meeting to consider the perpetuation of the grievance committee?

(Testimony of Sam R. Page.)

A. You mean when he requested a special meeting be called?

Q. Yes.

A. I remember that, but I didn't remember the date on which——

Q. I will give you the minutes, in case you want to refresh your recollection. You can hold this while I ask you a few questions out of it. [1936]

Do you recall Dr. Robinson talking with you, Dr. Page, and asking that a meeting be called at which his complaint against the grievance committee would be considered? A. Yes, sir.

Q. Where did that conversation take place, if you recall? A. I don't remember.

Q. Do you remember what was said, what you said to him and what he said to you? A. No.

Q. Would it refresh your recollection if I suggested that you talked with him on the eighth or ninth and he asked what the agenda would be at the ninth meeting, do you remember that?

A. I don't remember that.

Q. Well, you do remember Dr. Robinson asking that a meeting be called to consider that matter, is that correct? A. Yes.

Q. And what did you tell him?

A. I don't remember.

Q. Well, did you say you were going to have a meeting, or you would not have a meeting?

A. Now, the detail of this I don't recall.

Q. All right.

A. However, may I add just a point? He had,

(Testimony of Sam R. Page.)

according to the rules, a special meeting could be called if a sufficient number of member doctors joined with Dr. Robinson.

Q. Yes.           A. And they did.

Q. Yes.

A. Now, if that was presented, then the meeting would have been called.

Q. Yes.

A. And, undoubtedly, that was the condition that took place and the meeting was called.

Q. Now, did you set the time for these meetings?

A. I doubt if I did. My custom was to contact Mr. Fullerton, who is the Executive Secretary, and between perhaps the two of us, the timing was probably set in that manner, but I don't at the moment recall anything about that.

Q. You don't know, then, who set the date of the special meeting of November the 20th?

A. I do not know who set it.

Q. Wasn't it an unusual circumstance that you would have two meetings in consecutive order like that, the meeting on the twentieth and then the trustees meeting on the next day, the twenty-first?

A. It was an unusual situation occurred about that time.

Q. Well, what was that unusual circumstance?

A. Dr. Robinson, we had just received this shortly before [1938] that we had received this complaint. And now, I don't want to take the ball, but it seems easy to confuse the medical society meeting and the board of trustees. That is a little difficult

(Testimony of Sam R. Page.)

perhaps and maybe I have confused that. But it certainly would not be unusual to have this special meeting set at a certain date, which probably would be the earliest date that we could call for Dr. Robinson's request of a special meeting, and the meeting in Dr. Ralston's office was timed to allow so much time in accordance with the rules of procedure.

Q. Well, now, when you refer to an unusual occurrence taking place, are you referring to the Brooks complaint against Robinson or the Robinson complaint against the grievance committee, or both?

A. I am saying at this particular time that we are going through this, it was an unusual situation.

Q. Had you ever had in your recollection a special meeting of the society called upon a petition of members?

A. Not to my knowledge.

Q. Do you remember that meeting, the meeting at which the grievance committee was considered?

A. At this special meeting that you refer to?

Q. Yes. A. Yes, I remember that.

Q. Then the grievance committee had a close call that night, [1939] did it not, 15 to 14?

A. The grievance committee won in the vote by one vote.

Q. By one vote. Now, referring to the trustees meeting of November the 11th, 1950, that, I believe, was the meeting that voted to refer Dr. Robinson's case to the new state grievance committee, is that not correct?



(Testimony of Sam R. Page.)

Mr. Kimball: What was the date?

Mr. Sembower: November 21st.

Mr. Kimball: I believe you are in error, counsel. That was the meeting that was held to hear the complaint of Dr. Robinson and the defense of Brooks, November 21st, in Ralston's office.

Mr. Sembower: Let's ask the witness what occurred on that date, November the 21st, 1950?

A. If my memory serves me correctly, it is the time that we had the meeting in Dr. Ralston's office. That is, as I recall, the time.

Q. You have the minutes there, you refresh your recollection there on the twenty-first.

Mr. Kimball: Do you want the transcript, Mr. Sembower?

A. Well, this, you understand, was not a meeting of the society. This twenty-first was not the meeting of the society.

Q. (By Mr. Sembower): Well, I show you then the transcript here, Dr. Page, of the meeting held on the twenty-first. [1940] Do you recall the meeting from that transcript?

A. Yes, I am familiar with this.

Q. Well, then, what did this meeting do? What was done at this meeting of the 21st?

A. Mr. Brooks presented his signed complaint and discussed his case before the group of doctors there, and Dr. Robinson was there and presented his defense against the accusations that Mr. Brooks had made.

Q. Was Mr. Noel Edwards there?

(Testimony of Sam R. Page.)

A. At least part of the time.

Q. Did not Mr. Noel Edwards at this meeting concede that Dr. Robinson did not use the word "syphilis" in talking with him?

A. I would not be sure of that meeting, I mean as to the minutes of that meeting, as to what he might have said. If the transcript indicates that he did, then undoubtedly it would be correct.

Q. Reading from the transcript at page 29, I will ask you, Dr. Page, if you recall the statement of Dr. Robinson saying:

"In the first place, it is perfectly true that I made a number of phone calls to members of the family. I went to Edwards to talk to her about the letter. As to the exact number of phone calls and the exact time [1941] they were made, I think I called Mr. Brooks twice, he called me once. I remember calling Mr. Edwards once, stopping by his place of business once that I know of.

As far as this statement that I made any threats, I deny that absolutely. Mr. Brooks has stated, he implied I talked about nothing but this letter. I talked about the fact that I was going to have to give up his case. That is the primary reason that I made the telephone calls and caused me to give up the case, and because of giving up their case, I would have to do certain things, report it to Mr. and Mrs. Brooks and the other members of the family.

"I never told Mr. Edwards over the phone or any other time, that his father-in-law or mother-in-law had syphilis, but I did say there is a disease. I think

(Testimony of Sam R. Page.)

I used the word 'virus' in your father-in-law and mother-in-law which is serious and has a serious consequence to them because your father-in-law was not taking treatment and it might be their children might have it."

And the transcript says:

"Mr. Edwards: I will concede to that [1942] statement of Dr. Robinson."

And now Mr. Brooks said:

"What was that?"

And Mr. Edwards said:

"I said I would concede to the statement of Dr. Robinson that he did not use the word syphilis."

Do you remember that testimony?

A. I have a recollection, I think that was said. I don't recall specifically, but I think that he did say that.

Q. Dr. Page, were you not also in attendance in the hearing before the state grievance committee held the following spring?      A. Yes, sir.

Q. And did you hear a similar statement made by Mr. Edwards on that occasion?

A. I am inclined to think that I did. I am not just sure of that.

Q. Dr. Page, referring to your transcript, page 53—

Mr. Kimball: You mean the deposition?

Mr. Sembower: The deposition, the transcript of the deposition.

Q. I find these questions and I ask you if you

(Testimony of Sam R. Page.)

recall giving the answers. Mr. McNichols was asking the questions. He said: [1943]

“Q. Just one thing I was going to ask with respect to Mr. Sembower’s question.”

I had proposed a question just before.

“Did you ever have occasion personally or at a meeting to consider the merits of Dr. Robinson’s contention that he had not threatened this man, but that he had said to him, ‘You must come in for treatment because you have syphilis. If you don’t come in for treatment, there is nothing else I can do.’ And then when this furor arose, he said, ‘I don’t feel that we can maintain the doctor-patient relationship’ ”?

And the transcript shows that you answered:

“I have never heard this thing you are describing.”

And then the question:

“You have never heard that defense raised by Dr. Robinson?”

And you stated:

“I have never heard that that was correct.”

And then the question:

“Have you ever heard that defense raised and discussed by Dr. Robinson?”

And you said:

“No, I haven’t.” [1944]

Do you remember those questions and answers?

A. Yes, sir.

Q. Dr. Page, I show you Plaintiff’s Exhibit No. 39 dated November the 10th, 1950, a letter addressed

(Testimony of Sam R. Page.)

by you to Dr. Miles Robinson, and I show you also a letter, Plaintiff's Exhibit No. 444, dated November 15, 1950, a letter from Mr. Fullerton to Thomas R. Brooks, and I call your attention to the fact that in your letter to Dr. Robinson you state that—

\* \* \*

Q. (By Mr. Sembower): Dr. Page, I call your attention to the fact that you do not state in your letter to Dr. Robinson that he may be represented by counsel, but that Mr. Fullerton in his letter states to Mr. Brooks: "And you will also be permitted to be represented by counsel if you so desire."

I ask you if you are aware of the different instructions [1945] given to these two parties?

A. I have no particular recollection of this and this perhaps might not—I might not have known specifically that this letter was written.

Q. You think, then, that Mr. Fullerton was in error in giving those instructions to Mr. Brooks?

A. No.

Q. You think that it was proper, then, for Mr. Brooks to have counsel and Dr. Robinson not to have counsel?

A. May I answer that in my own way instead of just a yes or no?

Q. Yes, I'm not asking for a yes or no answer.

A. All right. Mr. Brooks is not a member of the medical society and does not know the specific rules that govern this problem. Dr. Robinson did.

Q. That was the reason for your distinction?

(Testimony of Sam R. Page.)

A. Well, I think it was unnecessary to tell him, a member of the medical society that he was entitled to be represented with counsel. It is indicated in the rules of the—constitution and bylaws.

Q. What is indicated?

A. That in a situation of a defense of this sort that he is entitled to have counsel. At least, that is my understanding and I am reasonably sure that is correct.

Q. Could you be in error? [1946]

A. Well, it has been so many years since I have read the rules.

Q. Dr. Page, I believe that the annual meeting was held on December the 14th, 1950, was it not? This was the next meeting in sequence, do you remember? A. I think that is correct.

Q. Do you remember a speech given there by Dr. Stevens? A. Not specifically.

Q. Now, do you remember the meeting of March the 27th, 1951, held by the local society to approve the grievance committee rules? Do you remember that meeting?

A. Well, I know there was such a meeting. I was not president at that time and I don't remember any more than that there was a meeting held.

Q. Do you remember anything about the consideration of the grievance committee on that occasion as to whether it was approved at that time or not?

A. Well, now, the record would have to show that. I simply don't recall the details.

Q. You don't have any independent recollection

(Testimony of Sam R. Page.)

of that?           A. Not specifically.

Q. Now, Dr. Page, we are approaching the meetings in the spring, but before I ask you about that, I would like to ask you about this provision in the disciplining of members, the bylaws, in which it states: [1947]

“If the accused person is a member of this society, the board shall investigate concerning the matter alleged, and shall use kindly efforts in the interest of peace, conciliation, or reformation, as far as possible and expedient. If after investigation the board believes the charges warrant further proceedings, it shall cause a written copy of the charges to be served on the accused member at least ten days prior to the date the board of trustees proposes to hold a hearing on the charges, which hearing shall be adjourned from time to time as necessary.”

Now, what kindly efforts, using the words here exactly, “in the interest of peace, conciliation, or reformation” were carried out to your knowledge by the members of the trustees in connection with this matter, if any?

A. Well, I recall a telephone conversation, just speaking of one individual, to Dr. Robinson, at which he indicated that he would simply not be present at that meeting that we refer to.

Q. What meeting is that?

A. The one we held in Dr. Ralston’s office where we were to hear Mr. Brooks and Dr. Robinson’s answer. Sometime prior to that meeting, Dr. Robin-

(Testimony of Sam R. Page.)

son and I had a [1948] conversation over the telephone and——

Q. Now, you regard that as a peaceful effort. He did, however, attend that meeting, did he not?

A. Dr. Robinson did attend that meeting.

The Court: You don't want the telephone conversation?

Mr. Sembower: Oh, I beg your pardon. Yes, I would like to have the telephone conversation.

The Court: I think he is just answering your question as to what efforts were made at conciliation.

Mr. Sembower: Indeed.

Q. What efforts were made?

A. I talked to him and he apparently had the rules in his hand and I had the rules in mine and I tried to persuade him that he should not decline to come to the meeting, that it was to his interest.

Q. Now, what meeting was this relating to?

A. This was the meeting in which the board was to hear Dr. Robinson's answer to the complaint of Mr. Brooks.

Q. Yes.

A. The one that was held in Dr. Ralston's office, and Dr. Robinson at first declined, saying that he didn't have to attend the meeting, and I indicated that we would have to call the meeting anyway to follow the rules, and we picked one particular word that he interpreted [1949] as making it essentially mandatory that he attend this meeting. I don't recall now the particular word, but he was very hostile



(Testimony of Sam R. Page.)

over the whole idea that he had to attend this meeting.

Q. But then did he attend the meeting?

A. Yes. But at that particular time, the question of counsel arose and he was instructed over the phone that he was entitled to counsel. I think that was one person's effort to try to use kindly efforts to help him.

Q. Now, Dr. Page, what kindly efforts were exercised prior to his notice for that meeting?

A. I really don't know.

Q. Did you exercise any kindly efforts personally?

A. From the time that this situation arose, I had talked to Dr. Robinson on many occasions, but he seemed to be completely adamant.

Q. You are testifying that you talked to him on numerous occasions?      A. Yes.

Q. Prior to the notice of the meeting?

A. Yes.

Q. Where did those conversations take place?

A. At least one of those conversations took place in the hall of St. Mary's Hospital and it appeared to me he had one thing on his mind and only one thing: "I have [1950] been wounded and I am going to get some results."

Q. Well, now, Dr. Page—were you finished?

A. Yes.

Q. Were charges ever served upon Dr. Robinson that you recall?

(Testimony of Sam R. Page.)

read some depositions that were taken some little time ago.

Q. Did you ever know that earlier than that time? A. No, I did not.

Q. Before I leave that May 22nd meeting, Dr. Page, I would like to ask you if you know who got in touch with Mr. Edwards prior to that meeting?

A. No.

Q. Did you ask anyone to get in touch with Mr. Edwards? A. No.

Q. Did you arrange for anyone to discuss Mr. Edwards' testimony? A. No. [1953]

Q. Did you know of any discussions with Mr. Edwards relative to his testimony, that he might change his testimony on that occasion from the prior occasions? A. No.

Q. You know of no discussions along those lines?

A. I know of none.

Q. Mr. Edwards did appear at that meeting, did he not? A. That is correct.

Q. I want to ask you, Dr. Page, about your statement in the deposition, on Page 46, in which it appears:

“Q. Did you have any view concerning his mental condition?

“A. Well, I had a general impression that his conduct was somewhat peculiar, let's put it that way.

“Q. Would you say that it was paranoiac?

“A. As I understand paranoiac, yes.

“Q. What about rumors or reports of previous

(Testimony of Sam R. Page.)

mental breakdowns, did you ever hear that he had had any?

“A. Not specifically other than a rumor, perhaps that there had been. I don’t believe at the time this was going on I had heard that, but some years I believe I have heard that there had been a mental breakdown.” [1954]

Do you remember making those statements?

A. Yes, sir.

Q. Have you since making those statements made any inquiry or determined whether as a matter of fact Dr. Robinson ever did have a mental breakdown?      A. No, sir.

Q. Do you know of your own knowledge whether he has ever had a mental breakdown?      A. No.

Q. Is it your testimony today that you believe he is paranoiac?

A. My testimony today is that I believe his actions were peculiar.

Q. Do you wish to change your testimony that it was paranoiac at this time in the medical sense?

A. I feel that it was along that paranoid tendency, but as far as changing the testimony, I don’t believe I specifically stated that in the deposition.

Q. What materiality, Dr. Page, would that have in connection with the proceedings which were carried on by the society concerning Dr. Robinson?

A. None.

Q. In your opinion, did your belief that he was paranoiac condition your views with respect to Dr.

(Testimony of Sam R. Page.)

Robinson's case as it progressed through the society? [1955]      A. No.

Q. Dr. Page, did you attend the hearing of the Judicial Council on December the 2nd, 1951, at Los Angeles?      A. Yes.

Q. I believe that you and Dr. Tompkins were the representatives from here, is that correct?

A. That is correct.

Q. Was any objection made there by you, Dr. Page, that the notice was inadequate at that meeting, the notice given to you representatives of the society?

A. Well, I felt that it was very definitely inadequate, but I don't remember specifically making that as a type of a complaint.

Q. But was there any objection made, formal objection made, to that effect?

A. Not to my knowledge.

Q. Did you make any objection to other conditions there at the Judicial Council hearing?

A. Formal objections, no.

Q. Dr. Page, I want to return for one question to the May 22nd meeting. I believe that you were the one who put the motion for the expulsion of Dr. Robinson?      A. Yes.

Q. Your motion was to expel him, whereas the recommendation of the state grievance committee at that time, or the [1956] directive, was for six months expulsion, is that correct?

Mr. Kimball: Just a moment, you are not stating the question the way the minutes read, counsel.

(Testimony of Sam R. Page.)

Mr. Sembower: Well, I will state it again so there will be no controversy.

Mr. Kimball: Read the minutes.

Q. (By Mr. Sembower): You did put the motion, is that correct? A. I did.

Q. And was the motion for expulsion?

A. Yes.

Q. And that motion carried? A. Yes.

Q. Was that the same action which the state grievance had determined upon?

Mr. Rosling: Just a minute, your Honor. The action of the state grievance committee was a recommendation. It was not determined upon or directed as counsel stated a minute ago.

Mr. Sembower: I don't want to characterize it in any way. I just want to ask the witness. I will rephrase the question to say:

Q. Did the motion for expulsion conform with the communication from the state grievance committee? [1957]

A. The communication was a recommendation, sir.

Q. All right.

A. But I don't quite understand——

Q. It was for six months, was it not?

A. That was their recommendation.

Q. Well, and your motion was for expulsion, is that correct? A. Yes.

Q. Why did you make a motion for expulsion instead of six months suspension?

(Testimony of Sam R. Page.)

A. In the first place, it was not the responsibility of the local society to follow the suggestion of the state grievance committee. In other words, it is not necessary in any way that we should do it. In the next place, and I think more important, the bylaws of our society indicated that if a person were suspended for a period of time, that at the end of that time, the suspended member would automatically become a member of the society again. At that particular meeting, there was no feeling that I had, anyway, that Dr. Robinson in any way had changed or would change his mind in the six-month period as to whether or not he was right or wrong on this particular serious charge; that we, according to the bylaws, would then be expected, if we expelled, we would then review his application and other merits of the individual, and he would either be admitted to the medical society again or not [1958] admitted.

Q. In other words—

A. I felt that this was a situation that expulsion was the only reasonable treatment for Dr. Robinson.

Q. So that you thought the society might want to never readmit him to membership?

A. That is your statement, not mine, as to what I thought. The society, at the end of a year—we expelled him and at the end of a year, according to the rules, he would be in a position again to reapply, at which time his application would be considered.

Q. Did you have any expectation of what might happen at the end of a year?           A. No.

(Testimony of Sam R. Page.)

Q. Dr. Page, was there any discussion held on your motion that you recall? A. Yes.

Q. Did you discuss the motion along the lines you have just said? A. Yes. [1959]

\* \* \*

### ALFRED ERNEST LANGE

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

#### Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please? [1962]

A. Alfred Ernest Lange.

Q. And what is your address, Dr. Lange?

A. Residence, 926 Alvarado, Walla Walla; business address, Baker Building.

Q. And what is your profession?

A. Physician and surgeon.

Q. And do you have any specialties, Doctor?

A. By training, internist. By practice, modified general practice.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. Dr. Lange, how long have you practiced medicine in Walla Walla?

A. Since the last of July, 1923.

Q. Have you during all that time belonged to the Walla Walla Valley Medical Society or its predecessor group? A. Yes, sir.

(Testimony of Alfred Ernest Lange.)

Q. Since 1949, what positions, if any, have you held in the society?

A. Since 1949, would be a member of the board of trustees.

Q. And do you remember what your term was?

A. I believe it was one year, though I couldn't swear as to that.

Q. Would it sound reasonable to you that that would be the year 1950? [1963]

A. I was on the board of trustees in 1950.

Q. What positions, if any, Dr. Lange, have you held in the Washington State Medical Association?

A. None, except a member of some of the committees.

Q. Any of those committees recently since 1949?

A. No, sir.

Q. Are you a member of the Medical Service Bureau?      A. Yes, sir.

Q. How long have you been a member of the bureau?

A. Since its inception. I believe that was about 1932 or 1933.

Q. And have you held any positions in the bureau since 1949?

A. Yes, sir, but I couldn't state just which ones. We had different screening committees and everything else there at its inception, and I think all doctors had their turns on that.

Q. Yes. Dr. Lange, I will ask you about the various meetings which took place of the society and the trustees beginning in the fall of 1950 at which it



(Testimony of Alfred Ernest Lange.)

appears that the so-called Robinson matter was discussed in one way or another.

And, starting first with the meeting of the society on September 26th, 1950, I find your name among the persons present at that meeting. Do you [1964] remember attending the meeting of September 26th, 1950?

A. I would have to see the minutes to refresh my memory on that.

Q. Dr. Lange, I will hand to you Defendants' Exhibit 446, which is the so-called old minute book of the society, so that you may refresh your recollections from the minutes, if you desire.

Dr. Lange, I believe that on the occasion of this meeting, there was a discussion of the grievance committee, was there not?

A. I see no record of that in this meeting here of September 26th.

The Court: Did the witness say he attended the meeting?

Mr. Sembower: Yes.

Q. Do you recall attending the meeting?

A. Oh, here is one on the 26th.

Q. Yes.

A. As to just what the details of that meeting were or what the discussion was, that I could not recall. Apparently, it was a general business meeting of the society where many different things were discussed.

Q. Do you remember Dr. Robinson at that meeting voicing criticism of the grievance committee?

(Testimony of Alfred Ernest Lange.)

A. I don't recall whether at that meeting or at other [1965] meetings, I know that he did in other meetings.

Q. The minutes show, I believe, in the last paragraph there that speaking on the matter were Doctors Robinson, Stevens, Keyes, Carlson and Tompkins. Does that refresh your recollection as to any remarks that may have been made by Stevens, Keyes, Carlson and Tompkins?

A. It does not on that meeting.

Q. Well, now, Dr. Lange, do you remember receiving a copy of a letter dated August the 11th, 1950, to the bureau written by Dr. Robinson?

A. (No response.)

Q. August the 11th, 1950?

A. I couldn't recall any dates there. There were a number of letters received.

Q. Do you remember this particular letter?

A. I think the mimeographed—I could not remember it by that date, no, sir.

Q. When was the first, Dr. Lange, that you learned of the so-called Edwards complaint against Dr. Robinson relative to a charge of a dollar and a half?

A. I believe that was at a medical society meeting we had in the nurses' lecture room at St. Mary's Hospital one evening where the matter of the grievance committee came up for general discussion and also this letter.

Q. Would that possibly have been this meeting of September [1966] the 26th?

(Testimony of Alfred Ernest Lange.)

A. It seems to me it was later now. I wouldn't say for sure as to that.

Q. Do you recall at this meeting of September the 26th any discussion of whether a letter should be sent by the grievance committee to the Edwards relative to the complaint?

A. As I say, I don't recall any of the details of that September 26th meeting.

Q. Do you remember any discussions that were held relative to the sending of a letter to the Edwards relative to the complaint about the dollar and a half?

A. I don't know if that was discussed at that meeting or not, and if there was a letter sent, it would be a letter sent by the grievance committee itself, I am sure.

Q. Did you at this time on September the 26th know of the constituency of the grievance committee?      A. I did not.

Q. At that time, was the membership of the grievance committee known to the society, or do you just yourself not recall it?

A. I couldn't vouch for anyone else except for myself.

Q. Did you at this time know that Dr. Stevens was chairman of the grievance committee? [1967]

A. I couldn't say whether it was at that time or at some subsequent time.

Q. Do you remember when you first learned that Dr. Stevens was the chairman of the grievance committee? At about what time?

(Testimony of Alfred Ernest Lange.)

A. Well, it would be along in the time there that the matter of the Edwards case came up. Whether it was before or after that letter was written, that I could not say definitely.

Q. Now, Dr. Lange, referring also to September the 26th, which I think you find still in that old book, there was a meeting of the trustees held on the same date as the meeting of the membership, a regular business meeting, and I find your name among those listed present. The meeting apparently was held at the Marcus Whitman Hotel. And I wonder if you recall that meeting taking place?

A. The minutes say so and my name is there. I will go by the minutes on that.

Q. Well, you don't remember that it didn't take place, then?      A. No.

Q. Do you remember any discussion, Dr. Lange, at that time relative to an initiative pending before the voters of the state relative to medical treatments, and so on?      A. I am afraid I do not.

Q. Now, I notice, Dr. Lange, that the meeting of the [1968] society was held at St. Mary's and the meeting of the trustees was held at the Marcus Whitman. Was that the normal pattern of holding these meetings, if you recall, to hold one meeting at St. Mary's and then the other meeting at a hotel or at another location?

A. There has been no regular, definite place of meeting. Regular medical society meetings with scientific programs are usually dinner meetings.

(Testimony of Alfred Ernest Lange.)

Those were at hotels. Any special meeting and occasionally some others, but it would be rather rare to have a scientific meeting except as a dinner meeting, special meetings and that, and at times just straight business meetings of the medical society, were held at different places.

Q. Where in the Marcus Whitman Hotel were the meetings held, Dr. Lange, of the trustees?

A. In the regular scientific meetings, why, it would be in the large dining room.

Q. But for a meeting like this attended by Doctors Page, Tompkins, Keyes, Lange, Ralston and Fullerton, would you hold that in a parlor or a meeting room or in the restaurant, or how did you convene a small group like that?

A. Probably one of the large tables in the coffee shop or in the small dining room there.

Q. I see. And you would have refreshments there, and so [1969] on, while you had your general discussion? A. We had our food.

Q. Now, Dr. Lange, referring to the meeting of the trustees on October the 10th, which I think carries us into the new minute book—no, I guess it is still in the old book, sorry.

The meeting of October the 10th, Dr. Lange, it is not in the minutes because it was apparently a special meeting which was convened to consider the complaint by Thomas Brooks—

Mr. Kimball: Counsel, do you mean October 11?

Mr. Sembower: Perhaps I do.

Mr. McNichols: Yes.

(Testimony of Alfred Ernest Lange.)

Q. (By Mr. Sembower): Do you recall that meeting? A. Yes, sir.

Q. Do you recall who got in touch with you about the meeting?

A. I can't remember definitely on that, but I would think that would be Mr. Fullerton, our executive secretary, that gave me the message.

Q. Do you remember any explanation which he made about the purpose of the meeting?

A. That it was to consider charges by Mr. Brooks.

Q. Did you ask him anything about the nature of those charges before you went to the [1970] meeting? A. Not that I recall.

Q. Now, this meeting of October 11th, Dr. Lange, was attended by Doctors Page, Tompkins, Yengling, Lyman, Lange, Bohlman, Fullerton, Kimball, Tom Brooks, and Miss Curts, the reporter.

What was it your understanding that this was a meeting of? I mean, how was this group assembled and constituted together for the purpose of the meeting?

A. In observing those present, I would say they were members of the grievance committee and board of trustees and one or two of the older men of the medical society. Whether they had definite offices at the time or not, I couldn't say.

Q. Do you remember, Dr. Lange, of any discussion taking place at that meeting or after the meeting concerning Mr. Fullerton writing to the state as-

(Testimony of Alfred Ernest Lange.)

sociation relative to the pendency of a grievance against Dr. Robinson?

A. At that meeting? No, I have no recollection of anything like that at that meeting.

Q. Dr. Lange, are you acquainted with Thomas Brooks?       A. Yes.

Q. In what connection did you become acquainted with Mr. Brooks?

A. The first time I met Mr. Brooks was at this meeting of October 11th in the medical service bureau office. [1971]

Q. Have you met him at any time since?

A. At a subsequent meeting when the board of trustees held a hearing. Dr. Robinson was present at that meeting, not at the first meeting the complaint was made.

Q. Do you belong to any clubs which Mr. Brooks also belongs to, Dr. Lange, which you recall?

A. I understand from his testimony he belonged to one of the Masonic lodges, but whether it was number 7 or 13, I couldn't say. If it is number 7, why, then we would be in the same lodge, though I have never seen him at lodge because I don't go too often myself.

Q. I see. Now, also did Mr. Brooks ever get in touch with you relative to an investigation for an insurance company?

A. For insurance companies, yes.

Q. On what occasions did he make those investigations, if you recall? About when?

A. About what?

(Testimony of Alfred Ernest Lange.)

Q. About when did he make those investigations that he got in touch with you about, contacted you?

A. I couldn't recall whether it was one or two years after this matter first began or whether it wasn't. It seems to me that it was subsequent to the beginning of this trouble.

Q. Dr. Lange, did you have any conversations with any of [1972] the defendants in this case relative to Dr. Robinson's letter of August the 11th, 1950, in which he criticizes the bureau?

A. Not that I can recall.

Q. Or did you have any conversation with Dr. Balcom Moore about it?

A. I just couldn't say.

Q. Did you know that Dr. Balcom Moore wrote a letter answering Dr. Robinson?

A. I didn't know that until just recently.

Q. Had you ever talked to Dr. Pratt about Dr. Robinson's letter of August the 11th?

A. It would be hard to say. It was probably discussed among various different members, but as I recall, there was very little discussion about it.

Q. Dr. Lange, approximately what proportion of your income would you state is derived from the bureau activities?

A. It is a very minor part.

Q. Can you conjecture, can you make an estimate as to a percentage?

A. Just be impossible, because our office, it isn't broken down into separate parts. The medical service bureau might possibly have records of that. I would not have separate ones, but I would estimate



(Testimony of Alfred Ernest Lange.)

that probably not over a matter of fifteen per cent. Probably somewhat [1973] less than that.

Q. With whom do you practice, Dr. Lange?

A. In our offices, there are Dr. Falkner, Dr. Holmes, Dr. Campbell, Dr. Lyman and myself.

Q. Now, on the meeting, Dr. Lange, of October the 24th of the trustees, I will hand you those minutes so that you may refer to them, if you wish. I call your attention to an entry there concerning the grievance committee and ask you if you recall the discussion which took place at that time? I find your name among those present among Doctors Page, Ralston, Lange, Keyes and Fullerton.

I probably should inquire first if you recall attending the meeting?

The Court: What is this meeting?

Mr. Sembower: This is October the 24th meeting of the board of trustees.

A. Those were minutes of the meeting in which we tried to get some methods of procedure in regulation of the grievance committee.

Q. Do you remember what the nature of those procedures were, Dr. Lange?

A. First was that the complaint be submitted in writing and given to the executive secretary of the society, which at that time was Mr. Fullerton. [1974]

Q. Were those proposed procedures, Dr. Lange, drafted with the so-called Edwards complaint against Dr. Robinson in mind?

A. With no particular person in mind, no.

Q. They related, however, to securing a written

(Testimony of Alfred Ernest Lange.)

report, did they not, of the complaint and in the preferring of charges, and so on?

A. Well, it would be that all complaints, regardless of who made them, would have to be made in writing.

Q. Now, do you remember whether at this meeting the Edwards letter was considered, the letter written to the Edwards by Mr. Fullerton from a draft prepared by Dr. Stevens?

A. That I couldn't say definitely. I would say that at least in general discussion, probably was, because this date is subsequent to that time and it would be very unusual for anyone to not discuss that kind of a matter.

Q. Do you remember the gist of that discussion?

A. I couldn't say as to that.

Q. We have had some testimony, Dr. Lange, to the effect that any members of the society could attend the meetings of the trustees. Was that a fact?

A. Oh, yes. There are no secret meetings.

Q. Just any member of the society would be welcome to come [1975] to the meeting?      A. Yes.

Q. How would the society members know where the meeting was going to be held and when, and so on, to attend?

A. They were notified by the society.

Q. They received notification, you say?

A. But sometimes the meetings would be after a medical society meeting and it would be just announced from the chair that there would be a meeting of the trustees. That could happen.

(Testimony of Alfred Ernest Lange.)

Q. Dr. Lange, do you recall receiving around November the 8th or 9th, a communication from Dr. Robinson under date of November the 7th in which he filed a complaint against the grievance committee?

A. I know there was a complaint filed, but at which time I couldn't say.

Mr. Sembower: I will ask that what purports to be a return receipt of a registered letter bearing the date of November 8th, 1950, be marked Plaintiff's Exhibit for identification number——

The Clerk: It will be Plaintiff's Exhibit No. 515 for identification.

The Court: 515?

The Clerk: 515.

The Court: All right. [1976]

Q. (By Mr. Sembower): Dr. Lange, I will show you Plaintiff's Exhibit for identification No. 515 and ask you if you recognize the signature on the return receipt bearing the date November 8, 1950?

A. Yes.

Q. What is the signature?

A. Sarah Jane Martin. She was at that time one of our secretaries.

Q. And the name above was your signature?

A. That is not my name.

Q. That is your name?

A. That is my name.

Q. Signed with your authorization?

A. Well, there is no authorization. It was that I was out of the office and that registered letter came.

(Testimony of Alfred Ernest Lange.)

Q. And she had the authority to accept registered letters and sign it in the fashion that we find here?

A. Well, no definitely designated authority, it was just what would go on in most any office, probably.

Q. Yes, in the normal course of business.

A. Giving a receipt in the ordinary course of business.

Q. Thank you.

A. And that letter I think you will find in the records that were turned over to the defense counsel.

Q. Do you recall what the letter was? [1977]

A. No, I can't. I wouldn't attempt to testify on the details of it. I haven't seen that letter for several years.

Mr. Sembower: I will not introduce it at this time.

The Court: Did you offer it?

Mr. Sembower: If there is no objection, I will offer it. Otherwise, I haven't really completed proof on it.

The Court: All right.

Q. (By Mr. Sembower): Dr. Lange, were you aware of the meeting of the trustees held on November the 9th, 1950, at the Grand Hotel?

A. There was one meeting in there, the medical society and the trustees' meeting afterwards, which because of practice I had to miss.

Q. And you were not in attendance at this meeting on November the 9th?

(Testimony of Alfred Ernest Lange.)

A. There was the one meeting in there that I could not be present.

Q. I don't find your name among those in attendance. I find that the Trustees Page, Tompkins, Keyes and Ralston were present, and others were Doctors Lyman, Johannesson, Stevens, Judd Kimball and Mr. Fullerton.

Do you know, Dr. Lange, any reason why the others than the trustees were present?

A. If it was after a medical society meeting, why, then it [1978] could have been that just others had drifted around and knew of the meeting and just were present, as was their privilege.

Q. Was it customary for the society's attorney, Mr. Kimball, to attend trustees' meetings?

A. Only after the importance of this action or possibility of action came up against us.

Q. At this time—you refer to the possibility of this action, you stated that. To what do you refer when you say that, Dr. Lange?

A. Because of the charges of Dr. Robinson.

Q. The charges that Dr. Robinson had made?

A. The complaint of Mr. Brooks, when Mr. Brooks made that first complaint, we realized the seriousness of the situation and we had legal counsel at practically all of our meetings, if not all of them, thereafter.

Q. What was particularly serious about the Brooks complaint that would require you to have an attorney present?

A. Because Mr. Brooks complained there that

(Testimony of Alfred Ernest Lange.)

Dr. Robinson had made a threat to obtain privileged communication in order to obtain a letter from his son-in-law.

Q. Did you hear from any of the defendants, Dr. Lange, relative to this meeting of the 9th? Did they tell you afterwards what occurred?

A. I probably did or it was read in the minutes later. [1979]

Q. This was the meeting at which it was decided to proceed with the Brooks matter, was it not?

A. The minutes would show that.

Q. You don't have any independent recollection of that?

A. No.

Q. Dr. Lange, do you recall Dr. Robinson requesting a special meeting of the society to be held concerning the grievance committee?

A. Yes, sir.

Q. What do you recall in that connection?

A. That there was quite general discussion pro and con for the continuance of the grievance committee.

Q. I find your name, Dr. Lange, among those who attended the special meeting of the society held on November the 20th, 1950, to consider Dr. Robinson's complaint against the grievance committee, and ask you if you recall what took place at that meeting?

A. Where was that meeting held, if I may ask?

Q. To refresh your recollection, this, I believe, was the meeting which was called at Dr. Robinson's petition when he secured a number of signatures asking for a special meeting to be called, and it was

(Testimony of Alfred Ernest Lange.)

held, it appears from the minutes, at St. Mary's Hospital.

The Court: What date was that, Mr. Sembower?

Mr. Sembower: November the 20th. [1980]

The Court: That was the meeting of the society, wasn't it?

Mr. Sembower: That is correct, the special meeting.

A. What was your question again, Mr. Sembower?

Q. I asked you a general question, whether you recall the meeting or not? Do you recall attending that meeting? A. Yes.

Q. This was the meeting, was it not, at which the motion to abolish the grievance committee lost by one vote, 15 to 14? A. Yes, sir.

Q. Do you remember at this meeting also a motion being made to reconsider the Edwards letter that had been written by Mr. Fullerton at Dr. Stevens' direction? A. Yes, sir.

Q. Did you speak in connection with the consideration of that motion? A. Yes, sir.

Q. Do you recall what you said on that occasion?

A. I believe that that was the occasion on which I said that rather than—well, one request that was made by Dr. Robinson was that the board of trustees write a letter of apology to Dr. Robinson, and that at that time I stated that after careful study of that letter, I [1981] could see no objections, and that before I would be guilty of signing a letter of apology to Dr. Robinson on the basis of the grievance com-

(Testimony of Alfred Ernest Lange.)

mittee's letter, I should immediately wish to resign from the board of trustees.

Q. Did you include in your suggestion that you might resign under those circumstances, that you might resign from the society? A. I did not.

Q. Only the board of trustees?

A. Board of trustees.

Q. Dr. Lange, had you at this time read the constitution and bylaws of the local society?

A. I have read them at different times in the past and they have been revised, but to state any particular sections and that, why, that of course would be impossible I believe for anyone, unless they made it a point to memorize it.

Q. Had you at this time read the ethics of the American Medical Association relative to information and contagious diseases?

A. Yes. State law tells that.

Q. And you had also read the state statutes. Had you read the constitution and bylaws of the Washington State Medical Association? [1982]

A. I can't say whether I read them in toto.

Q. But you think you may have read them in part with reference to the issues in this particular matter then pending?

A. I do believe that I read some of them, at least.

Q. Now, Dr. Lange, the following night, November 21st, was the meeting held—Dr. Lange, before I leave the Edwards letter, your answer confused me a



(Testimony of Alfred Ernest Lange.)

little bit. Did you have in your mind that this was a letter to Dr. Robinson apologizing, that this proposal was to write a letter to Dr. Robinson, the trustees apologizing to him, or a letter directly to the Brooks—to the Edwards—relative to the letter that had been sent out by Dr. Stevens and Mr. Fullerton?

A. As I remember it, the apology was to be to Dr. Robinson.

Q. Is that your recollection of what you had in mind at that time?

A. That was my recollection of it.

Q. I ask you, Dr. Lange, about the second entry in the minutes, which states:

“To decide whether or not the board of trustees should write a letter to Noel Edwards stating that the grievance committee exceeded its authority in its letter of September 30, 1950, to him about Dr. Robinson and asking that he disregard this [1983] letter.”

Does that refresh your recollection at all as to the form of this letter that was before the house?

A. I would go on the minutes there before I would my memory.

Q. Would you still have opposed the writing of a letter to the Edwards on the same basis that you mentioned a moment ago?

A. With that same letter?

Q. Yes.

A. The interpretation that was put on it and that, I would still say the same.

Q. And you would have resigned from the

(Testimony of Alfred Ernest Lange.)

trustees had a letter to Mr. Edwards along those lines been written?

A. With the sensible letter that the grievance committee wrote and by careful studying of that letter, punctuation and everything else, I could see absolutely nothing objectionable in that letter and I would have felt derelict in my duties as a member of the board of trustees not to have supported the grievance committee in their action.

Q. Did you at that time, Dr. Lange, know that a meeting of the grievance committee, as such, had not actually been held on the letter to be sent to the Edwards?

A. Well, there was that letter as of the grievance committee. [1984]

Q. Would it have made a difference to you had you known that the grievance committee had not actually met and considered it as a committee, the letter to the Edwards?

A. Well, as I recall, the grievance committee consisted of three members and that any two members were a majority.

Q. And you felt that it could function with Dr. Stevens having an informal conversation with Dr. Yengling?

A. If they were both members of the grievance committee; yes.

Q. Dr. Lange, was the sending of a letter directly to a patient directing them not to pay a bill, did that have a precedent in the history of the society?

A. As I recall that letter—

(Testimony of Alfred Ernest Lange.)

Mr. Kimball: If the Court please——

A. ——they were not directed——

Mr. Kimball: Just a moment.

The Court: Just a moment.

Mr. Kimball: I object to the statement of counsel of what the letter says. It is the best evidence and speaks for itself.

Mr. Sembower: I will withdraw the question.

The Court: Yes; all right.

Q. (By Mr. Sembower): Was it your construction of this letter, Dr. Lange, you said you read it, that it instructed the Edwards not to pay the dollar and a half [1985] bill?

A. It mentioned that it be not paid but in an advisory manner.

Q. You don't think——

A. It was not an order.

Q. I see. If it had been an order, would you have felt as you did about the letter?

Mr. Kimball: If the Court please, I think that is objectionable.

The Court: Well, this is cross-examination. I will overrule the objection. I didn't get what the answer was.

A. Will you please repeat the question?

Q. (By Mr. Sembower): If it had been a direction not to pay the dollar and a half, would you have felt the same way about that letter?

A. If it had not been a direction?

The Court: The letter.

Q. (By Mr. Sembower): You stated a moment

(Testimony of Alfred Ernest Lange.)

ago that you didn't think it was a direction, but it was conditional. Now, if it had been a direction, would that have changed your attitude in the matter?

A. If it had been a definite order, it may have changed my attitude entirely, but it was not an order, it was advisory.

Q. That was your construction of the letter as you read it? [1986]           A. Yes, sir.

Q. I find your name, Dr. Lange, among those who were present at the meeting of the board of trustees on November the 21st, which was a hearing of the complaint by Mr. Thomas R. Brooks. Do you recall attending that meeting?

A. That was in the offices of Dr. Ralston?

Q. That is correct.

A. I was there; yes, sir. That was the first hearing that I recall.

Q. Dr. Lange, do you recall any participation that you had in that meeting?

A. I believe that—you mean as far as asking any questions?           Q. Yes; yes.

A. I may have asked some questions, it is hard to say.

Q. I believe the vote was unanimous there, was it not, to sustain the complaint?

A. I believe it was unanimous.

Q. In other words, you voted for it?

A. Yes, sir.

Q. Dr. Lange, how well did you know Dr. Robinson at this time, if you recall?

(Testimony of Alfred Ernest Lange.)

Mr. Kimball: What do you mean by this time?

Mr. Sembower: I mean at the time of the 20th of November—21st of November, 1950. [1987]

A. Just very casually, more by sight than by actual personal contact.

Q. Had you had any contact with him, close contact with him, in professional matters?

A. Not that I recall.

Q. Social matters? A. No.

Q. Had you become acquainted with him in connection with bureau activities?

A. Not that I recall; no.

Q. Society meetings or activities there?

A. Just society meetings, perhaps.

Q. Did you, Dr. Lange, consider the provision in the constitution and bylaws providing for:

“If the accused person is a member of this society, the board shall investigate concerning the matter and shall use kindly efforts in the interest of peace, conciliation, or reformation.”

Did you take that into account in connection with the November 21st meeting? A. We tried to.

Q. Did you, yourself, make any inquiry as to whether kindly efforts in the interest of peace, conciliation, or reformation had been attempted?

A. I couldn't say as to that; no. [1988]

Q. Did you, yourself, make any such attempt?

A. Not that I recall.

Q. Dr. Lange, were you aware that there had been a communication from the society to the state

(Testimony of Alfred Ernest Lange.)

grievance committee prior to this meeting of November 21st, 1950?

A. I couldn't say as to that. I know after the meeting, sometime after that, just which date I couldn't say, then we did take it up with the state grievance committee.

Q. But you don't recall that any steps had been taken prior to this date?

A. I couldn't say yes or no to that question.

Q. Dr. Lange, you do know, do you not, that Dr. Pratt wrote a letter to Dr. Robinson's father relative to this matter of his expulsion?

A. I heard that he had.

Q. When did you first learn that?

A. That I couldn't say, whether it was before or after his expulsion.

Q. Did you talk with Dr. Pratt about Dr. Robinson's mental condition?

A. I may have talked about the vagaries of it.

Q. What vagaries do you refer to?

A. Oh, that any individual could read all the things that he read into that letter of the grievance committee, for [1989] one thing.

Q. Any other vagaries?

A. The thing that came out in the hearing of November 21st meeting, that was that first meeting, his tendency to be very evasive of different questions that were propounded to him.

Q. Did you consider that evidence of mental state?

A. Well, whether mental perturbation or not

(Testimony of Alfred Ernest Lange.)

would be a question. It seemed to me that if it were just a matter of nervousness, he was certainly more nervous than most that I have ever seen under similar circumstances.

Q. Dr. Lange, have you ever seen a doctor under similar circumstances in a disciplinary proceeding?

A. Yes.

Q. On how many occasions have you seen that?

A. There is at least one before that I remember.

Q. Do you mean in the local society?

A. Yes, sir.

Q. And who was that?

A. It was when we took up a matter of a complaint of Dr. Brooks—or Dr. Rooks, not Dr. Brooks—Dr. Rooks against Dr. Stevens.

Q. And when was that, if you recall?

A. Well, that was before any grievance committee had been established. [1990]

Q. And what was the disposition of that matter?

A. That was amicably resolved.

Q. And Dr. Stevens was not nervous on that occasion? A. Well——

Q. I mean, comparing him with Dr. Robinson, that was your standard, Dr. Stevens?

A. There was no evasiveness in his questions and answers, none at all.

Q. Have you ever observed any other doctor in similar circumstances?

A. I couldn't recall right at this minute since that time.

(Testimony of Alfred Ernest Lange.)

Q. Would you say that paranoia characterized Dr. Robinson's state of mind?

A. At that time, I would say no.

Q. But would you say that at some other time it did?

A. I think that he has at least showed some of the characteristics. To come right out and say paranoic, why, that is a pretty hard thing to say.

Q. You are using the word paranoia in the medical sense, are you not?      A. Beg your pardon?

Q. You are using the word paranoia in a medical sense?      A. Yes.

Q. Now, you said that you may have had some conversations with Dr. Pratt relative to this. When and where did [1991] those take place?

A. Oh, they would happen when we met in the hospital or happened to be going out of the hospital, meeting. It was a general topic of conversation among the whole medical profession. It would have been unnatural if doctors hadn't discussed it when they met. But to pick out any particular time and place it happened, that would—

Q. Well, what doctors that you recall participated in these general conversations?

A. Why, all of them so far as I know. There weren't any particular doctors that didn't discuss it, whether they were pro or con.

Q. They were all discussing it?

A. Yes; as far as I know.

Q. To your knowledge, was any investigation



(Testimony of Alfred Ernest Lange.)

made to ascertain whether Dr. Robinson had a history of mental illness?

A. Not so far as I know.

Q. Well, was this a matter of just jocular comment or serious comment around the washrooms? Where did it take place?

A. Well, some of them were really pretty much frightened.

Q. Who was frightened?

A. I couldn't name any definite ones, but I know there were [1992] some of them that were very much concerned.

Q. What were they concerned about?

A. They were concerned that Dr. Robinson might possibly become violent and do either them or their families harm.

Q. Well, did you know of any past history of violent conduct on the part of Dr. Robinson?

A. I did not.

Q. Did they mention any specific instances of past conduct along that line?

A. Not that I recall.

Q. Do you recall the meeting held shortly after the expulsion meeting of May the 22nd at which this matter was discussed among various of the doctors and Dr. Pratt was asked to get in touch with Dr. Robinson's father?

A. You say that was after the expulsion?

Q. Well, did it occur before? Do you recall such a meeting?

A. I don't recall it definitely. I know there was conversation at some time that Dr. Pratt was sup-

(Testimony of Alfred Ernest Lange.)

posed to know the family and that he was going to write them.

Q. Where did that conversation take place?

A. Oh, I couldn't say as to that. So much conversation all around there, I couldn't say whether it was in committee meeting or whether it was outside of committee meeting.

Q. Did you make any personal inquiry to determine whether [1993] Dr. Robinson had a history of mental illness? A. No; I did not.

Q. Did you make any personal inquiry to determine whether he was suffering from a mental ailment at that time?

A. By personal inquiry, would you mean contacting people and all that, or would you go on your own medical observations?

Q. Well, whatever the inquiry would be, Doctor, did you make an inquiry of any kind?

A. I made my observations as to his general behavior in meetings under questioning, things of that sort.

Q. And those observations indicated to you what?

A. That he certainly was not normal in the sense that you would consider a person normal from a nervous or mental standpoint.

Q. Did that have any influence on your action, Dr. Lange, in connection with the matter?

A. No, sir; that wasn't the issue. The issue was the threat in that letter, which in ordinary parlance means blackmail to me.

(Testimony of Alfred Ernest Lange.)

Q. Well, now, Dr. Lange, in connection with your decision, in connection with making up your own mind as to whether a threat was made or not, did the state of Dr. Robinson's mind as you analyzed it have a bearing?

A. Well, it would hardly be—I couldn't conceive of any [1994] other doctor seeing all those things in that letter and going on with this thing.

Q. You couldn't conceive of anybody——

A. That no one in his normal senses would continue in that manner.

\* \* \*

Q. (By Mr. Sembower): Dr. Lange, I am referring to Plaintiff's Exhibit 301, which is the Principles of Medical Ethics of the American Medical Association, and I refer to Chapter II, "The Duties of Physicians to Their Patients, Patience, Delicacy and Secrecy."

"Patience and delicacy should characterize all of the acts of a physician. The confidences concerning individual or domestic life entrusted by a patient to a physician and the defects of disposition or flaws of character observed in patients during medical attendance should be held as a trust and should never be revealed except when imperatively required by the laws of the state. There are occasions, however, when a physician must determine whether or not his duty to society requires him to take definite action to protect a healthy individual from becom-

(Testimony of Alfred Ernest Lange.)

ing infected, because the physician has [1995] knowledge, obtained through the confidences entrusted to him as a physician, of a communicable disease to which the healthy individual is about to be exposed. In such a case, the physician should act as he would desire another to act toward one of his own family under like circumstances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications.

“Sec. 2. A physician should give timely notice of dangerous manifestations of the disease to the friends of the patient. He should neither exaggerate nor minimize the gravity of the patient’s condition. He should assure himself that the patient or his friends have such knowledge of the patient’s condition as will serve the best interests of the patient and the family.”

I ask you if you have read this section or heard of this section prior to today?

A. I have read that sometime or other. Whether it is that particular issue, whether it has been revised recently or not, but that is in conformity with general medical attitude.

Q. This is the edition dated 1937. Had you, Dr. Lange, read this prior to the hearing on November the 21st, 1950? [1996]

A. When I started practice, I read the rules of the AMA as well as of our state. But they have been revised since then and probably glanced at them at

(Testimony of Alfred Ernest Lange.)

different times, but I couldn't state any definite date; no.

Q. Well, now, did you consider the facts of the Brooks-Robinson matter in the light of these canons of ethics?      A. Yes, sir.

Q. That I just read?      A. Yes, sir.

Q. Did you know that Tom Brooks had been diagnosed as having syphilis?

A. I did not when it first came up.

Q. You mean at the time of the hearing on the 21st?

A. At the time he made his complaint, I believe he brought up the word at that time for the first time.

Q. Would it have made a difference in your vote at the meeting on November the 21st if you had known that Tom Brooks had syphilis?

A. I don't see why it makes any difference what he had. It was a matter of the threat. That was the important thing to me.

Q. Dr. Lange, were you aware, did you hear in the testimony of Mr. Edwards, the son-in-law of Mr. Brooks, that Dr. Robinson did not disclose the word 'syphilis' to him in connection with this [1997] disease?      A. I don't recall that; no.

Q. You don't recall that at all?

A. As I recall it, he did state that he said it.

Q. Do you recall the trustees considering specifically in any of their sessions during which they discussed this matter, these particular canons of ethics, Sections 1 and 2 of Chapter II?

(Testimony of Alfred Ernest Lange.)

A. I don't know that we read that down in detail, but it was so evident to everyone that to use any privileged communication, information, that we as doctors have, to use that as a threat to obtain something from another patient is just about as low as any doctor can get, in my estimation.

Q. Well, now, Dr. Lange, did you at that time know that the fact of whether a threat had or had not been made was on the basis of only the testimony of one man, Tom Brooks?

A. No. There was Tom Brooks, there was Mr. Edwards, and also one other member of the family, I believe was Mrs. Edwards, had listened in on the telephonic conversation.

Q. That is your impression, that there was testimony such as you have just described, weighed heavily with you in that decision?

A. That it was a threat and that he had made those statements; yes.

Q. If it were established that that were not the case, [1998] would that have influenced your vote?

A. If there had been others contradictory right at that time.

Q. Well, Dr. Robinson denied it, did he not?

A. No; he did not.

Q. It was your impression that Dr. Robinson did not deny that he had made a threat?

A. His answer and reply to the statements made at that time was in the effect of the words that when angry, it is hard to say what one would say, that is, that he was sort of irresponsible for saying what

(Testimony of Alfred Ernest Lange.)

he did. But Dr. Robinson did not come out at any time and deny those statements.

Q. Dr. Lange, do you recall Dr. Robinson stating at the hearing on November the 21st, and I am reading from page 28 of the transcript of that hearing:

“As far as this statement that I made any threats, I deny that absolutely. Mr. Brooks has stated, he implied I talked about nothing but this letter. I talked about the fact that I was going to have to give up his case. That is the primary reason that I made telephone calls and caused me to give up the case, and because of giving up their case, I would have to do certain things, report it to the department of health and [1999] report it to Mr. and Mrs. Brooks and the other members of the family.”

Do you recall hearing Dr. Robinson give that testimony?

A. That he made those statements about having to report things in that, yes; but no denial that he had made a threat.

Q. In other words, you just believed——

A. He admitted that he was talking to these patients and that he was stating in those conversations that if Mr. Brooks did not get that letter from Mr. Edwards, that he would feel compelled to report it to state officials, other members of the family.

Q. And that was determinative of your decision?

A. Absolutely. [2000]

## NATHANIEL E. BEAVER

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

## Direct Examination

By Mr. McNichols:

Q. Will you state your full name, please, Dr. Beaver?      A. Nathaniel E. Beaver.

Q. And where do you reside?

A. 1125 South Division, Walla Walla.

Q. You are a physician?      A. Yes.

Q. Are you a specialist or a general practitioner?

A. General practice.

Q. With whom do you practice, Dr. Beaver?

A. Beg pardon?

Q. With whom do you practice?

A. I am a member of the Walla Walla Clinic.

Q. How many doctors are in that clinic?

A. Five. [2001]

Q. Would you name them, please?

A. Yengling, Brooks, Jamieson, Stottler and myself.

Q. Now, Dr. Beaver, starting with January of 1950 through 1952, what offices, if any, did you hold in the Walla Walla Medical Society?

A. I was vice president beginning in 1951—I think I am correct about that.

Q. I can't hear you too well.

A. I say I was vice president, I believe, beginning in 1951. I had to look it up, I couldn't remember.



(Testimony of Nathaniel E. Beaver.)

Q. As vice president, did you serve on the board of trustees?

A. My name is in the board of trustees' meeting sometime in 1951, I must have.

Q. Well, did you take part in the meetings of the board of trustees in 1951?

A. At one meeting, that one meeting is the only one I have any recollection at all. I may have been at others. If so, it will be in the record.

Q. You were a member of the board of trustees during that year?

A. All officers of the society are members of the board of trustees, as far as I know.

Q. You were elected, I believe, Dr. Beaver, at the annual meeting in December of 1950. Does that refresh your [2002] recollection?

A. It doesn't help me much, but my name is in the record.

Q. You have your elections at the annual meeting, do you not?           A. That is correct.

Q. I will give you this, Dr. Beaver, it might help you refresh your memory. I want to cover this just briefly.

A. I looked at it once. It couldn't have been before '51?

Q. I refer you to the minutes of the meeting of the board of trustees on December 21, 1950, as contained in Defendants' Exhibit 447, and you may just keep that book. I will just ask you a few questions.

(Testimony of Nathaniel E. Beaver.)

Examining those minutes, do you find you were present at that meeting?

Mr. Tuttle: What meeting is that?

Mr. McNichols: December 21st meeting of the trustees.

Q. Were you present at that meeting, Dr. Beaver? A. Beg pardon?

Q. Were you present at that meeting?

A. My name is here.

Q. Do you recall being present?

A. I don't, sir.

The Court: What is the date of that meeting, Doctor?

A. It is December 21, 1950.

The Court: Oh. [2003]

Q. (By Mr. McNichols): The annual meeting that year was December 14, 1950, Dr. Beaver. Do you remember that meeting?

A. I don't remember it.

Q. Perhaps you should look at the minutes of the meeting of December 14th and see whether or not that is the meeting in which you were elected vice president. I know it is hard to remember these things.

A. I'm sorry to have such a poor memory.

Q. Well, now, do the minutes of the meeting of December 14, 1950, show you were elected as vice president of the society at that meeting?

A. Yes.

Q. And then turn back to the meeting of December 21, 1950. I believe you said you were present there. A. Yes.

(Testimony of Nathaniel E. Beaver.)

Q. Was the December 21st meeting the first meeting which you attended in your new capacity as vice president? A. It must have been.

Q. And then prior to that time, Dr. Beaver, had you acted in any capacity with respect to the dispute between Dr. Robinson and the society?

A. None that I know of.

Q. Were you familiar with the factual situation and the background of it? [2004]

A. Well, if I had to give you any specific information about it, I couldn't. I suppose I knew what all the rest of the members of the society knew at that time.

Q. You just had general knowledge of it during that period? A. I presume so.

Q. Well, I notice in the meeting of December 21st, there are some entries there with respect to paying the expenses of the society incurred in the Robinson matter, are there not?

Mr. Rosling: Expenses incurred in the preparation of the transcript of the complaint, counsel.

Q. (By Mr. McNichols): Do you find that reference? A. Yes; it is here.

Q. And then will you refer now briefly to the minutes, Dr. Beaver, of January 11, 1951, a special meeting of the board of trustees?

A. January what?

Q. January 11, 1951.

A. January 11 is a regular monthly meeting of the Walla Walla Medical Society.

Q. Well, I think you will find either on the next

(Testimony of Nathaniel E. Beaver.)

page or the page before that a reference to a special meeting of the board of trustees. Here (indicating).

A. Yes.

Q. There is a reference there, is there not, to certain [2005] actions with respect to paying a special assessment for extraordinary legal expenses by the trustees?

A. Will you state that again?

Q. Is there a reference in the business of that meeting?

A. Yes. I was trying to see what this motion was, but that had to do with——

Q. There was an assessment there of \$6.45 against each member in addition to the regular dues?      A. That is correct.

Q. Now, Dr. Beaver, you again attended a meeting according to the minutes, of January 25, 1951. Just refer to that very briefly, January 25th.

A. Yes.

Q. And on the same date, there was a meeting of the entire membership of the society. Do you find the minutes of that meeting?      A. Yes.

Q. Do you recall at that meeting that rather extensive minutes of previous meetings were read?

A. I don't remember it.

Q. Well, I will read them briefly into the record. Reading from the minutes of the meeting of the society on January 25th, 1951, as contained in Defendants' Exhibit 447:

“The minutes of the meetings of the Board of trustees [2006] held September 26, 1950; October

(Testimony of Nathaniel E. Beaver.)

24, 1950; November 9, 1950; November 28, 1950; December 13, 1950; December 21, 1950, and January 11, 1951; the regular society business meeting of September 26, 1950, the special meeting of November 20, 1950, and the annual meeting of December 14, 1950, were read and approved after correction to show that the society's action approved of the application of membership of Dr. Cranor was actually on a transfer demit."

Do you recall the reading of those minutes now?

A. No.

Q. Were you apprised of the fact that those meetings were the ones that dealt during the past six months with the Robinson matter?

A. If I was, I don't remember it.

Q. Do you recall at that time learning any more of the facts in the background of this situation in this Robinson dispute?

A. Will you repeat that?

Q. Do you recall approximately at that time of obtaining additional information about the facts of the background of the Robinson dispute with the society? A. No. [2007]

Q. Well, then, Dr. Beaver, would you refer now to the minutes of the meeting of the board of trustees held on the 15th of May, 1951? A. Yes.

Q. For your information, that was the meeting, according to the minutes, at which——

A. I looked this up.

Q. You have examined that and have you refreshed your memory?

A. I did just enough to know that I was there.

(Testimony of Nathaniel E. Beaver.)

Q. Dr. Beaver, will you read the last two entries in the minutes of that meeting of May 15th?

A. (Reading):

“Dr. Beaver moved, seconded by Dr. Carlson, that the board of trustees, in accordance with the findings of the state grievance committee, finds Dr. Miles H. Robinson guilty of violating the principles of Chapter II, Section 2, of the current Code of Medical Ethics of the American Medical Association. The motion was carried unanimously.”

Q. That was a motion made by yourself?

A. It must have been.

Q. Would you read the next line, please?

A. (Reading): [2008]

“Dr. Beaver moved, seconded by Dr. Carlson, that in accordance with the recommendations of the state grievance committee, the board of trustees recommends that Dr. Miles H. Robinson be sentenced to a suspension of his membership in the Walla Walla Valley Medical Society for a period of six months. The motion was carried unanimously.”

Q. Now, at that time, Dr. Beaver, did you have any knowledge of the facts of the charges against Dr. Robinson?

A. Well, I am sure I must have.

Q. Well, how did you obtain them, do you know?

A. I must have got them from my attendance at meetings.

Q. Do you recall now receiving any such facts of the background of the matter?

(Testimony of Nathaniel E. Beaver.)

A. I don't recall anything specifically. These things are so far back and they weren't things that I dwelt on a great deal and I simply can't recall anything specific.

Q. I notice at that meeting of May 15, 1951, there was present Dr. Tompkins, Dr. Beaver, Dr. Carlson, Dr. Pratt, Dr. Page and Mr. Fullerton. Do you recall any discussion at that meeting about the facts of the charges against Dr. Robinson?

A. No, sir.

Q. Was there any such discussion held? [2009]

A. This is the meeting that I just read from?

Q. Yes.

A. Well, I am sure there must have been, because——

Q. I notice there was a reference in there——

A. But I don't recall anything specific about it.

Q. Do you recall the recommendations or report, whatever you call it, of the state grievance committee having been read at that meeting?

A. No; I don't.

Q. If it appears in the minutes, I assume it was read, is that correct?

A. It must have been read.

Q. But you don't know where you got your independent knowledge of the facts of the case, of the Robinson case?

A. Well, I could only have gotten them from the various meetings that I attended previous to that.

Q. Now, Dr. Beaver, I will show you briefly Plaintiff's Exhibit No. 104, which purports to be

(Testimony of Nathaniel E. Beaver.)

the decision of the Washington State Grievance Committee in the case of Thomas R. Brooks versus Miles Robinson. Do you recall having seen that document before?      A. I do not.

Q. I will ask you whether this particular provision was ever discussed at that meeting of the Board of Trustees on the [2010] 15th of May. Quoting from page 3 of the said Exhibit No. 104:

“On the second count of divulging privileged information, the testimony of Mr. Noel Edwards was definite that Dr. Robinson informed him that Mr. Brooks was suffering from syphilis. This testimony was not refuted and must therefore be accepted.”

Do you recall that particular paragraph being discussed?      A. I do not.

Q. How long did that meeting last, do you know, Dr. Beaver?      A. I have no idea.

Q. Do you recall who was presiding?

A. No.

Q. Upon what did you act when you made your motion to find Dr. Robinson guilty and also to recommend his suspension from the society?

A. State that again, please.

Q. Upon what were you acting when you made the motion?

A. I presume I was acting on the information we had.

Q. Were you acting just on the recommendations of the state grievance committee?

A. No; I think not. I think on the information



(Testimony of Nathaniel E. Beaver.)

we had and on what we decided, there again I can't remember the specific— [2011]

Q. Had you ever seen any of the witnesses who purportedly testified against Dr. Robinson?

A. Have I ever seen them?

Q. Had you ever seen them prior to that time?

A. I am not sure that I had.

Q. Had you ever heard Dr. Robinson's version of what had occurred in the Brooks matter?

A. Not unless I heard it at a medical meeting.

Q. Did you make any independent investigation of it at all yourself? A. No.

Q. Did you subsequently go to the meeting of May 22nd, 1951? A. Yes.

Q. Did you see Noel Edwards at that meeting?

A. I can't be sure, I believe I did.

Q. Do you know how he happened to be there?

A. No.

Q. Was his possible presence at that meeting discussed at the meeting of May 15th?

A. If it was, I don't remember it. [2012]

\* \* \*

Mr. Sembower: Yes. Your Honor, this deposition relates almost exclusively to damages so I do not propose at this time to read more than a few pages.

The Court: Very well.

Mr. Sembower: I will read the qualification pages and then refer to pages 13 to 16 only.

Reading from the deposition, direct examination by Mr. Sembower:

DEPOSITION OF DR. FRANCIS  
MERVIN CAMPBELL

“Q. Will you state your full name, please?

“A. Francis Mervin Campbell.

“Q. What is your address?

“A. East Sound, Orcas Island, Washington.

“Q. Dr. Campbell, you are a medical doctor?

“A. Yes.

“Q. Where did you have your medical training?

“A. The University of Toronto.

“Q. Did that result in a degree, a medical degree?  
A. M.D. [2013]

“Q. Where have you practiced medicine?

“A. I practiced in Whitman County, Washington, and Walla Walla, Washington.

“Q. When did you practice in those localities?

“A. 1908 to 1913 in LaCrosse, Washington. That is Whitman County. And in 1913 to 1950 in Walla Walla, Washington.

“Q. During the period when you were practicing medicine in Walla Walla, Washington, where did you have your office located, if you can remember?

“A. Well, first in the Baker Building and then in the Drumheller Building.

“Q. How long were you in the Baker Building, Doctor?  
A. Five years.

“Q. And then in the Drumheller Building?

“A. Yes.

“Q. Where was your office in the Drumheller Building?  
A. Suite 200.

“Q. Was it at all times in the same place in the

(Deposition of Dr. Francis Mervin Campbell.)

Drumheller Building?           A. Yes.

“Q. What was the nature of your practice in Walla [2014] Walla, Washington, Dr. Campbell?

“A. General practice. That included practice as a physician, also surgeon and obstetrics.”

Now, referring to page 13 of the transcript—

Mr. Rosling: What page did you conclude on, please?

Mr. Sembower: Concluded on page 3 at line 20.

Now, turning to page 13 at line 9:

“Q. Dr. Campbell, while you were practicing in Walla Walla did you belong to the Walla Walla Valley Medical Service Corporation?

“A. I did.

“Q. Known as the Bureau?

“A. Yes; I did, during the early period of its existence.

“Q. About how long were you a member of that?

“A. That I can't tell you. I think probably a year, a year and a half.

“Q. Did you resign from the Bureau?

“A. Yes; I did.

“Q. Why did you resign from the Bureau?

“A. Well, in the first place, the practice I had was such a size that I didn't feel compelled to belong to the Bureau. I think in a good many places such a large part of the practice in the vicinity passes through [2015] the hands of the Bureau that a good many of the Doctors, perhaps half of them—it is just a guess—feel that it is an advantage to belong. That advantage didn't—wasn't present in

(Deposition of Dr. Francis Mervin Campbell.)

my case. In the second place, there are certain rules and regulations about the practice in the Bureau, if you are a member of the Bureau, that put you under, shall we say, jurisdiction of the Bureau.

“Q. What advantage, Dr. Campbell, would you say that a doctor might realize from membership in the Bureau?

“A. It is a negative advantage. Where a Bureau has a block of patients—for instance, all the employees of a certain company, and that sort of thing, you are automatically largely barred out from attending those people so contracted for if you don't belong to the Bureau.

“Q. You stated a moment ago that membership in the Bureau in a sense placed a doctor under the control of the Bureau. Could you elaborate on that somewhat?

“A. Yes. In the case of a surgical operation you could examine a patient as carefully as you [2016] liked, as carefully as you could, and you could decide if an operation was necessary, and, yet, it was my understanding that until that patient had been examined by the referee of the Bureau that you couldn't go ahead and do your operation. It interfered with your personal liberty to that extent, and in a small town it is entirely possible that the Referee of the Bureau could be a professional rival. That was not the case in regard to me in Walla Walla; but, yet, there is the potentiality of a biased opinion.

“Q. When you sold your practice to Dr. Robin-

(Deposition of Dr. Francis Mervin Campbell.)

son did you make any suggestions to him as to whether he should join the Bureau or not?

“A. I believe I did suggest to him to join. I am not sure about that. I think I did.

“Q. Why would you suggest to him that he should join the Bureau?

“A. Well, I presume it was because that he was a relatively new man in town and that he perhaps wouldn't have the same indifference to what the Bureau could do for him or against him.

“Q. I don't want to press the point unduly, but [2017] I wondered if you could explain what you meant by what it could do for him or against him?

“A. Well, just this: There was a certain amount of solidarity in the Bureau, and if you didn't belong it could be interpreted as a matter of indifference on your part or hostility, and I think there probably was a certain amount of work that could be referred to you if you belonged, and it wouldn't be if you didn't belong. For instance, if a man who belonged to the Bureau had a case and the question of consultation came up, why he almost necessarily is restricted in his choice of a consultant to other members of the Bureau, things like that.

“Q. You mentioned a moment ago solidarity in the Bureau and hostility if you didn't belong to the Bureau. What did you mean by that, Dr. Campbell?

“A. Well, solidarity. This matter of consultation. Also, the Bureau had meetings at regular intervals, and if you weren't in the position of being able to

(Deposition of Dr. Francis Mervin Campbell.)

be indifferent to any referred work, why, your absence from [2018] those meetings would set you apart from them, and that is not a very good situation.

“Q. What was the relationship in your observation between the Bureau and the Medical Society in Walla Walla?

“A. The big bulk of the members of the Society were also members of the Bureau, and it was my opinion and observation that the Bureau seemed to gradually supplant the Medical Society.”

\* \* \*

### NATHANIEL E. BEAVER

having previously been duly sworn, resumed the stand and [2019] testified further as follows:

#### Direct Examination

(Continued)

By Mr. McNichols:

Q. I have a brief question about the motion which you made at the meeting of the trustees on the 15th of May of 1951, where it states:

“Dr. Beaver moved, seconded by Dr. Carlson, that the board of trustees, in accordance with the findings of the state grievance committee, finds Dr. Miles H. Robinson guilty of violating the principles of Chapter II, Section 2 of the current Code of Medical Ethics of the American Medical Association.”

Are you familiar with Chapter II and Section 2,

(Testimony of Nathaniel E. Beaver.)

of the Ethics of the American Medical Association? Were you familiar with them at the time of this meeting?

A. Well, Chapter II and Section 2 doesn't mean anything to me when I think of it now.

Q. Well, were you familiar with them at the time you made——

A. What did it have to do with? I must have been——

Q. Do you recall specifically having looked into them?

A. I don't recall specifically having looked into them at that time.

Q. Well, here, you may examine them. [2020]

A. Well, all physicians are familiar with that.

Q. What part of that did you feel that Dr. Robinson was violating at the time you made that motion?

A. Well, I—I'm not quite clear as to what you are asking me.

Q. Well, your motion referred, as I recall it, to Chapter II, Section 2, of the Canons of Ethics of the American Medical Association. Are you familiar with what one it was? Your motion says Chapter II, Section 2, and I am showing you Chapter II, Section 2, and ask you what you were referring to there when you recommended that he be found guilty of violating that, or were you acting purely on the recommendations of the state Grievance committee?

A. No, we were acting simply on the recommendation of the state grievance committee and our

(Testimony of Nathaniel E. Beaver.)

own feeling about the matter as it had been carried on up to that time. That is, the motion, I can remember about it. I hate to be so stupid about this.

Q. No, I realize——

A. I mean these weren't things that I dwelt on, what not. I was a member of the board of trustees simply because I happened to be vice president.

Q. Well, did you have any knowledge of the facts at all when you made that motion?

A. I am sure I had knowledge of the [2021] facts.

Q. You still don't know what portion of this Section 2 Dr. Robinson violated, as stated in your motion?

A. Well, I must have had.

Q. Well, it is very short, it is only six, seven or eight lines.

A. Well, the whole thing was that he had threatened to give privileged information.

Q. Well, now, what information did you have about that threat?

A. I had all the information that had come up during the previous meetings, the ones I attended before I became——

Q. Were you in attendance at the meeting in which the complaint was made?

A. No, the board of trustees' meeting, because I wasn't a member of the board of trustees then.

Q. Were you in attendance?

A. But all of this information was accessible to members of the board of trustees at the time I became a member of the board of trustees.



(Testimony of Nathaniel E. Beaver.)

Q. Did you talk to any of the witnesses involved?

A. I don't remember that I did.

Q. Did you say now that you examined these various reports of these hearings, and so on?

A. I presume we went over them at the board of trustees' meeting. [2022]

Q. You don't recall it, however?

A. I don't recall it specifically, no. [2023]

\* \* \*

### MILDRED CURTS

called and sworn as witness on behalf of the plaintiff, was examined and testified as follows:

#### Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Mildred Curts.

Q. And what is your address, Miss Curts?

A. 238 Fulton.

Q. Miss Curts, did you take a stenographic report of a statement of Tom Brooks made in the Drumheller Building on October the 11th, 1950?

A. I took a statement of Tom Brooks, I wouldn't give you the exact date at this time without referring to my notes.

Q. I will give you your notebooks in just a moment. I [2024] would like to ask you also if you took a stenographic report of a hearing before the

(Testimony of Mildred Curts.)

board of trustees of the Walla Walla Valley Medical Society on November 21, 1950?

A. I think I did.

Q. And I would like to ask you if you took a stenographic report of a hearing before the grievance committee of the Washington State Medical Association at the Marcus Whitman Hotel on April 22, 1951?

A. I did.

Q. Miss Curts, I show you Plaintiff's Exhibits for identification No. 454, 454-A, 454-B, 454-C and ask if you have seen these before?

A. Yes, I have.

Q. And what are those, Miss Curts?

A. Those are my stenographic notebooks.

Q. Are those the notebooks which contain the notes on the meetings which you have just testified about?

A. They are.

Mr. Sembower: I ask that Exhibits 454, 454-A, 454-B and 454-C be admitted in evidence.

Mr. Kimball: I have no objection.

The Court: They will be admitted, then.

(Whereupon, the said notebooks were admitted in evidence as Plaintiff's Exhibits 454, 454-A, 454-B, 454-C.) [2025]

Q. I ask you to hold them, Miss Curts.

A. All right.

Q. I am going to ask you to refer to some of your notes, Miss Curts, and read them to us. For the convenience of the Court, I will hand the court transcripts of the two that we will refer to in case

(Testimony of Mildred Curts.)

the Court wishes to refer to them. I have photostatic copies.

Miss Curts, will you please refer to your notes on the Brooks' statement? That was the first one of the three, the one on October 11, 1950. At the bottom of page 1, do you find your notes?

A. Yes, I do.

Q. Will you please read from your notes, beginning with the paragraph—well, yours does not show lines, but beginning with the paragraph "The complaint is this," and so on, and then if you would read there.

A. (Reading):

"My daughter and son-in-law, Mr. and Mrs. Noel Edwards, had a case of overcharge made by Dr. Robinson. They came to this service corporation asking for certain advice and this was an overcharge for the service of a dollar and a half of Dr. Robinson. He had admitted in the performed in the service of my granddaughter, drank some poison one night and they had contacted Dr. [2026] Robinson and he instructed them to take certain action and go to the Crescent Drug to pick up a prescription and they made two trips and there was no prescription. The doctor, on being contacted"—

Q. All right, now, I think that is far enough, Miss Curts. With your notes still before you there, I wish to turn to page 10 of your transcript and, for the purpose of refreshing your recollection, I read to you the testimony which you gave at the

(Testimony of Mildred Curts.)

to nine my son-in-law told him that he—he had parties to get it.”

Q. Is that the close of the paragraph [2029] there?      A. (Reading continued):

“And that announced to him the whole family had syphilis.”

That is down to where Mr. Kimball starts questioning.

Q. Yes. Now, do you find there, Miss Curts, any notes other than what you have read between where you stopped reading and the questions by Mr. Kimball?      A. No, sir.

Q. And now, Miss Curts, will you please refer to your notes for the November 21st hearing, 1950, in Dr. Ralston’s office at 8 p.m. in the evening? That is the meeting of the trustees. Do you find that?      A. Yes.

Q. Page 29, top of the page, and I think that it starts out—

The Court: What page is that? Twenty-nine?

Mr. Sembower: Page 29 of the trustees hearing.

The Court: All right.

Q. (By Mr. Sembower): And I believe it starts out, “And caused me to give up the case.” Do you find that?      A. Yes.

Q. Will you please start reading there at that point?      A. (Reading):

“And caused me to give up the case. I would have to do certain things, report to the department of health and—give [2030] it to Mr. and Mrs.—give up Mr. and Mrs. Brooks and the family. I never

(Testimony of Mildred Curts.)

told Mr. Edwards over the phone or any other time that his father-in-law or mother-in-law had syphilis, but I did say there was a 'disease in your father-in-law which is serious and has a serious consequence to them, because your father-in-law was not taking treatment and might by that that the children might have it.' "

Q. All right, now, if you will just continue right there for a few more lines.

A. (Reading continued):

"Mr. Edwards: I will concede to that statement of Dr. Robinson.

"Dr. Robinson: A number of minor points in here. Mr. Brooks said I didn't discuss this matter of the complaint to the grievance committee, but told me over the phone it was talked over in the family."

Q. Now, I think that is far enough, Miss Curts. Just before Dr. Robinson speaks, between Mr. Edwards' statement, "I will concede that statement of Dr. Robinson" and Dr. Robinson speaks, do you find any notes in your book?

A. I do not. [2031]

Q. Now, Miss Curts, I will ask you to turn to page 49 of the same transcript. It is down at the bottom of the page there, starting out: "Mr. Lepiane: I watched my wife suffer quite a bit mentally through learning of this going on." Do you find that? Do you find that passage?

A. Yes.

Q. All right, now, will you please read beginning

(Testimony of Mildred Curts.)

Q. And now, Miss Curts, I find in your deposition, question by Mr. Sembower:

“Q. All right, if you then would continue, Miss Curts.

“A. That is Mr.—I have been brought into court and I watched my wife suffer quite a bit mentally through learning of this going on.

“Dr. Robinson: I didn't tell them, but Mr. Edwards knew what I was talking about. He jumped the gun, that was all right. I had responsibility to make sure the other members of the family didn't have syphilis.” [2034]

Now I will show you, Miss Curts, the transcript of your deposition. A. Yes, sir.

Q. And ask you to compare it with your notes. What is your—

A. Well, as I say, your “I” and “He” are practically the same symbols. One is just a little smaller than the other and I read it “I” now and I think that is the way I read it in the deposition more than likely.

Q. Well, now, at the time, however, that you gave your deposition, you said that it was “He.”

A. Well, I more than likely did. I may have. Well, it looks like “I” in here now. To me, I would say that it was “I” in this.

Q. Would you say that you can be confused over the “I” and the “He”?

A. It is very easy to be done when you are writing shorthand notes.

Q. It is an important distinction.

(Testimony of Mildred Curts.)

A. I know it.

Q. Whether it is "I" or "He," and for that reason I will ask you, is it true that your notes, however, do not point that out very clearly, that distinction, so you might read it one way at one time and another way another time? [2035]

A. Well, you could very easily because of your symbols in that if you're writing hastily, but I would say it was "I" in these notes now. I didn't have my notes, of course, when I read over that deposition to compare them with my notes.

Q. But you did have your notes at the time you gave the deposition?

A. At the time I gave the deposition, yes.

Q. In front of you at that time? A. Yes.

Q. Now, Miss Curts, on the Brooks statement, it says: "Miss Curts can go over her notes and you go over it very carefully and make any changes."

I will ask you, did Tom Brooks correct your first copy according to those instructions?

A. He did.

Q. Did you retype the transcript, including the changes made by Mr. Brooks? A. I did.

Q. When did you do that, if you recall?

A. I couldn't tell you that. I don't remember when they were written up in the first place, but they were given to Mr. Brooks to correct.

Mr. Sembower: May I borrow the exhibit?

The Court: Surely. [2036]

Q. (By Mr. Sembower): I will hand you, Miss Curts, the Plaintiff's Exhibit No. 18, the so-called

(Testimony of Mildred Curts.)

Mr. Sembower: That is all.

The Court: Any questions?

### Cross-Examination

By Mr. Kimball:

Q. Miss Curts, at the time of your doing this work in the fall of 1950 and the spring and summer of 1951, what position did you hold?

A. I was official court reporter for the Superior Court for Judge Bean.

Q. Was there any other court reporter for that court? A. Not at that time.

Q. How long have you held the position of official court reporter for Walla Walla County?

A. Up to that time?

Q. Yes, ma'am.

A. It would be about nine years. [2039]

Q. Miss Curts, how long has it been since you have actively engaged in transcribing or reading shorthand? A. About three years.

Q. You have been in a different line of work entirely? A. Yes.

Q. I will ask you, Miss Curts, in transcribing shorthand notes, is it not only a combination of the actual symbols that you write, plus your memory as attached to those symbols, that goes into the transcribing? A. It certainly does.

Q. And I ask you further, regarding the meeting of November the 21st, 1950, in Dr. Ralston's office, was that a fast-moving meeting with much conversation and talk going on?



(Testimony of Mildred Curts.)

A. It was a very informal meeting and there may have been four or five people talking at one time. It wasn't conducted like a court hearing, you know, because it was very informal, and while they tried to keep it——

Q. Miss Curts, were you ever approached by any doctor in Walla Walla or myself regarding what you should put in your transcription of these notes?

A. Never.

Q. At the time you made these transcriptions from your notes, were they a true and correct report of the hearings held as far as you could then conduct your reporting? [2040]

A. They were.

Mr. Kimball: That is all.

### Redirect Examination

By Mr. Sembower:

Q. Miss Curts, when did you retire as court reporter? A. In '53.

Q. Now, you mentioned that at the hearing in Dr. Ralston's office, there was a great deal of confusion and a great deal of talking. Did you mean to say it was difficult for you to get the transcript, an accurate transcript?

A. Well, not—they had conversations in between the hearings to clear up things. The doctors talked among themselves and possibly some of the other people were talking and—but as far as the main part of the meeting, I think that that was conducted when Dr. Robinson or Mr. Brooks were talking or

## ARTHUR YENGLING

a defendant herein, was called and sworn as an adverse witness [2043] by the plaintiff, was examined and testified as follows:

## Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Arthur A. Yengling.

Q. What is your address, Dr. Yengling?

A. Bryant Avenue, Walla Walla, Washington.

Q. That is your home address? A. Yes.

Q. What is your office address?

A. 55 Tieton Street.

Q. And what is your profession?

A. Physician.

Q. Do you practice any specialties in the profession? A. Yes, general surgery.

Q. Dr. Yengling, what have been your official connections first with the Walla Walla Valley Medical Society since 1949?

A. I was on the grievance committee when it was formed.

Q. That was in 1950, I believe?

A. In 1950. That is my only official connection other than a member.

Q. How long have you been a member of the society or its predecessor group?

A. That has been since 1936. [2044]

Q. Have you served on the board of trustees?

A. No.

(Testimony of Arthur Yengling.)

Q. Now, in the state association, what official positions, if any, have you held with that association?

A. I was a member of the board of trustees of the state medical society in 1949 or '50.

Q. And I believe you were also a member of the grievance committee?

A. Of the state grievance committee.

Q. What was the term of office for that post?

A. I am still a member of the state grievance committee.

Q. Have you held any offices with the American Medical Association?      A. No, sir.

Q. You are a member of the bureau, are you not?

A. Yes.

Q. When did you first become a member of the bureau?      A. About 1937.

Q. And have you held any official positions in connection with it?

A. Yes, I have been president of the bureau and on the board of trustees.

Q. When were those positions held?

A. Oh, I was president about three years ago and on the board of trustees following that, or before that, I was [2045] on the board of trustees before my year of presidency, which was two years ago, not three.

Q. Dr. Yengling, what would you estimate is the approximate proportion of your income which is derived from bureau cases?

(Testimony of Arthur Yengling.)

A. Now, that is hard to do, but I imagine around 5 per cent, probably.

Q. When were you appointed to the local society grievance committee?

A. When it was first formed.

Q. That was about in April, 1950, would you say?

A. Well, I don't remember the date, but 1950.

Q. And who discussed your appointment to that group with you in advance?

A. Nobody discussed that. I was appointed by Dr. Page, who was then president of the medical society.

Q. Do you remember about when he discussed that with you?

A. Well, he called me on the telephone, if I am not mistaken, and told me I was appointed on the committee.

Q. Did he tell you what committee it was?

A. Yes, the grievance committee.

Q. And did he say who else was going to be on the grievance committee?      A. No.

Q. Did he say who would be chairman of the committee? [2046]

A. Well, that committee was just being formed at that time and I can't remember that he told me who the other members were at all on the committee.

Q. When did you find out who the other members were?

A. I found out when Dr. Stevens called me and said he was chairman of the committee and we had some cases to come up.

(Testimony of Arthur Yengling.)

Q. When was that, about?

A. I don't remember the dates. It was probably in September of '50, I think, around there.

Q. Did he at that time tell you who the other members of the committee were?           A. Yes.

Q. Who were they?

A. Well, Dr. Bohlman was the only other member.

Q. Did Dr. Lyman have any connection with the committee?

A. Well, I didn't know Dr. Lyman was on the committee when we had our first meeting or had anything to do with it.

Q. When did you have your first meeting?

A. In September, I think, 1950.

Q. And where did that take place? Also when, if you recall?

A. That took place—Dr. Stevens called me up and said we had some business for the grievance committee and he wanted to talk it over with me, and I was over at Dr. Brooks' home at the time and he said he would come [2047] over and we would go over the things, and he did.

Q. Is that Dr. Peter Brooks?           A. Yes.

Q. And you met over at Dr. Peter Brooks' home?

A. That's right, but he had nothing to do with our meeting. It was a very informal meeting. We discussed these problems at Dr. Brooks' home.

Q. Dr. Bohlman was not there, was he?

A. No.

(Testimony of Arthur Yengling.)

Q. Was an effort made to get in touch with him and ask him to come, if you know?

A. Well, I don't know. I wasn't the chairman of the committee and that wasn't discussed.

Q. And at this time, you didn't know Dr. Lyman even had any connection with the committee?

A. No, sir.

Q. I believe you stated that there was more than one case at this time. How many cases were there?

A. Well, we had three, we had three problems, three cases, that first meeting.

Q. We have never been able to find any records of those cases, Dr. Yengling, other than Dr. Robinson's. Do you know where those records might be?

A. No. As far as I know, we had no record, unless Dr. Stevens kept a record of it, because the two cases that [2048] we had were two doctors, were very easily arbitrated and straightened out, and Dr. Robinson's case wasn't so easy. But I don't know of any written record of that meeting.

Q. Did this meeting at Dr. Peter Brooks' home, to your recollection, occur between the complaint of Mrs. Edwards, which I believe was taken by Mr. Fullerton on August the 29th, and October the 23rd, when I believe Dr. Stevens accosted Dr. Robinson on the street and introduced himself as chairman of the grievance committee?

Mr. Kimball: Pardon me, did you say October 23rd?

Mr. Sembower: September 23rd, I'm sorry.

Q. Did it occur, to your recollection, between

(Testimony of Arthur Yengling.)

those two dates, August 29, '50, and September 23, 1950?

A. I think so, yes.

Q. Under what rules at this time was the committee operating, Dr. Yengling?

A. Well, we were operating under the best regulations we could find. Grievance committees were just being started and at that time we had information from the various medical journals on how they should be set up, and Dr. Stevens had been quite interested in this and was collecting material from other medical societies on how their committees were set up, and we had no written rules to follow at the time except that the medical society, as I remember it, had authorized a grievance committee be [2049] set up and function.

Q. I believe in your deposition on January the 20th, a question was put to you:

“And you and Dr. Stevens were operating on your own interpretation of what you should do.” And you said: “Not on our own interpretation. We had numerous correspondence of various types of procedure for grievance committees from all over the country. There had been various examples that had been published in the AMA of procedure. I think they had been published in Northwest Medicine, and Dr. Stevens was collecting information on how to operate a grievance committee over a period of quite a few months. We discussed that material.”

I just wondered, do you recall what your discussions of that material involved?

A. Well, we were trying to get together definite

(Testimony of Arthur Yengling.)

rules and regulations for our grievance committee and rules that would be accepted by the medical society. They had authorized a grievance committee and with power to act as a grievance committee without a set of rules for us, and we were trying to get a set of rules together to be authorized by the society, which was eventually done, but I don't believe they were any more than in a nebulous stage when we had our first three cases.

Q. Was there any precedent that you know of, Dr. Yengling, [2050] for a secret grievance committee? A. None that I know of.

Q. Now, at the meeting of the society held on September the 26th, Dr. Robinson attacked the grievance committee, did he not?

A. I don't remember whether I was present at that meeting. I think I was not. September 26th? I might have been.

Q. I find in the minutes, Dr. Yengling, that those present included Carlson, Keyes, Lange, Lyman, Page, Pratt, Stevens, Tompkins, Yengling, Ralston, and Robinson.

Mr. Rosling: Are you reading September 26th?

Mr. Sembower: Yes, I am reading September 26th.

A. That sounds like the board of trustees.

Mr. Rosling: There are a great many others.

Mr. Sembower: These are the defendants.

Q. Do you remember any discussion?

A. I can't remember what went on at that meeting. What are you referring to?



(Testimony of Arthur Yengling.)

Q. I wanted to ask you if you remembered. Of course, you have no recollection of the discussion pro and con of the grievance committee at all at that meeting?

A. Well, I don't know whether it was that meeting or not, but there was a discussion about the grievance committee when we decided to form a grievance committee, a lot of discussion, and that is when the idea of the secret [2051] grievance committee was decided on, at one of those meetings, I don't know which one, and the reason for that was not anything secret other than that the committee be kept secret from the public so that the public wouldn't annoy the doctors on the committee. There was no other reason for secrecy than that.

Q. Had any announcement been made to the membership of the constituency of the secret committee that you know of?

A. I didn't get that question.

Q. Had any announcement been made to the membership of the constituency of the secret committee that you know of?

A. Well, the membership voted on whether they would have it secret or not. I was present at that meeting when there was considerable discussion about whether to have it secret or not and it finally was passed, I think, by the members present. I remember a meeting when we passed it, to have it secret. I was opposed to it being secret, personally.

Q. Now, at this meeting on the 26th, I find a

(Testimony of Arthur Yengling.)

minute entry, the last item on the agenda, which states that:

“The grievance committee was discussed by Stevens, Keyes, Carlson, Tompkins and Robinson.”

Does that refresh your recollection at all?

A. No, I don't remember what they said.

Q. I don't want to keep you in the dark. Here is the [2052] minute book, I show you the last entry here: “A discussion was held on the operations of the grievance committee.”

A. Well, that doesn't mean much to me.

Q. It doesn't recall anything to your mind?

A. No, no.

Q. Did you know at this time that Dr. Robinson was criticizing the grievance committee?

A. No, I don't believe so. I don't remember that.

Q. Do you remember when the letter went out to the Edwards on the complaint which Mrs. Edwards had given to Mr. Fullerton about Dr. Robinson?

A. Yes, I remember that.

Q. When was that, about?

A. Well, after our meeting of the grievance committee, Dr. Stevens and I decided that these complaints were of a quite minor nature and the thing for us to do was to try and solve them amicably, and Dr. Stevens, as chairman of our committee, was to talk to the doctors and get these complaints straightened out, and I think Dr. Stevens talked to Dr. Moore and Dr. Carlson about their complaints and, with very little difficulty, straightened them right out and they were dropped.

(Testimony of Arthur Yengling.)

And Dr. Stevens told me one day that he had talked to Dr. Robinson and Dr. Robinson wouldn't acquiesce at [2053] all and that he didn't want to talk to him and told him that our grievance committee had no authority to act on his complaint, which we felt it did.

And then after that discussion with Dr. Robinson, we had another meeting and Dr. Stevens talked to me about trying to settle this thing, and he wrote the letter and we discussed what was going to be in this letter. And previously at our grievance committee, one of the cases, I think, against Dr. Carlson was a bill, whether there was a mistake, and I think in that particular case we justified Dr. Carlson's bill and told the individual that the bill was satisfactory and they should pay it in full, and I think which they did. There was just a misunderstanding over it and we upheld that particular one as a committee trying to have good public relations, and our letter to Dr. Robinson, we thought we were trying to do a kindness to Dr. Robinson and this family, too, when we said that we thought this dollar and a half fee could be ignored.

Q. Well——

A. I mean, we had to settle it one way or the other.

Q. Did your committee or the society have any precedent for writing directly to a patient and telling him not to pay a member doctor of the society?

A. No, the society gave us no authority for that, but we [2054] were given authority as a grievance

(Testimony of Arthur Yengling.)

committee to act as a grievance committee, and we thought that that was certainly within reason to arbitrate a dollar and a half fee, and I would rather have paid it out of my pocket than to try and straighten it out. It would be much easier with somebody who didn't arbitrate like Dr. Robinson.

Q. Dr. Yengling, did it make a difference in the deliberations of you and Dr. Stevens that this was only a dollar and a half? Did the amount make a difference?

A. No, no, it was a misunderstanding on a patient's part. The patient wasn't even complaining about it, actually, the patient wanted information about this dollar and a half fee. I think the information we had, they wanted to know why they were charged a dollar and a half for a telephone call. They didn't think telephone calls were charged in this town, and it actually is true that, as far as I know, nobody charges for telephone calls.

Q. Well, now, your only information personally, Dr. Yengling, about Dr. Stevens' contract with Dr. Robinson was entirely Dr. Stevens' statement to you, is that correct? A. That's right.

Q. Did he tell you that he had talked to Dr. Robinson on the street? [2055]

A. He told me that he talked to Dr. Robinson on the street informally about this little misunderstanding, and that Dr. Robinson got haughty about it and wouldn't settle.

Q. Did he tell you that he had had to tell Dr.

(Testimony of Arthur Yengling.)

Robinson that he was on the grievance committee, or chairman of the grievance committee?

A. Oh, I think that's right, I think he told Dr. Robinson he was on the grievance committee. After the first cases we had, there was no secrecy as far as the grievance committee was concerned with the doctors. As soon as we had a case, I think the doctors would know about that right away.

Q. But up to this time, you don't have any knowledge that Dr. Robinson knew who the members of the grievance committee were?

A. No, I am sure he didn't, because I didn't know I was on it until we had a case come up, until Dr. Page called me a short time before that, and we hadn't aired anything about the grievance committee.

Q. Did you make any personal investigation about this complaint?           A. No.

Q. Did you talk to Mrs. Edwards?

A. No, no. [2056]

Q. Did you have any information that she had complained directly to Dr. Robinson about it?

A. Well, I don't think we had at the time of the meeting any information on that. Dr. Stevens was to find out those things as the chairman when he talked to Dr. Robinson. I had no information on Dr. Robinson's contact with the Edwards other than they wanted this dollar and a half fee straightened out and they wanted to know whether they should pay or whether they shouldn't, it was my recollection.

(Testimony of Arthur Yengling.)

Q. Now, Dr. Yengling, I believe that you attended a meeting at which a statement was taken from Mr. Tom Brooks?

A. Yes, I remember that.

Q. Complaining against Dr. Robinson. You remember that meeting?      A. I do.

Q. Who gave you notice of that meeting?

A. Well, I think the president of the medical society notified me of that meeting.

Q. Dr. Page?      A. I think so.

Q. Did he tell you what kind of a meeting it was when he invited you to come?

A. No. He said there was some very serious business to bring up at that time and he wanted the grievance [2057] committee at this meeting, and I didn't know ahead of that meeting what the business was.

Q. You were a member of the grievance committee, did it strike you at that time as strange that that would not be referred first to the grievance committee and acted upon by it?

A. No, I think at the meeting Dr. Page said that he got this information before the grievance committee and he considered this information and the charges so serious that he referred it directly to the board of trustees and not to the grievance committee.

Q. Dr. Page said that?

A. I think that is what he said to me.

Q. Did he tell you why he regarded it as so serious?

A. Yes, because of it being blackmail and a threat.

(Testimony of Arthur Yengling.)

Q. You mean the nature of the charges?

A. That's right. The charge was very serious against the doctor and he didn't want that to come before the grievance committee. It was a committee to settle only minor complaints and little disputes over bills and straighten out public relations.

Q. Did you know at this time that the Brooks complaint had any relationship to the Edwards complaint which you had been working on?

A. Well, I didn't know it until I got to the meeting. [2058]

Q. Did you soon discover that there was a relationship between the two?

A. Yes, we were told that before Mr. Brooks gave his story to us and before the Edwards presented their side of the story. I mean he briefed us on why we were there, as well as I can remember.

Q. Who briefed you on that?

A. I think Dr. Page did that.

Q. Did he tell you at that time that there had been any additional contacts with Mr. Brooks other than the phone call from him to Mr. Fullerton?

A. No, I don't think he told us anything. He said this matter was of a serious nature and we were there to hear it and that is what the meeting was called for. He didn't give us any of the details at all.

Q. Now, at the hearing you said the Edwards' side of the case was presented. Wasn't it a fact that only Mr. Brooks appeared before that meeting?

A. That may have been right.

Q. In other words, it was just a matter of taking

(Testimony of Arthur Yengling.)

Mr. Brooks' word or Dr. Robinson's word at this point?

A. Well, I think that's right. But Mr. Brooks seemed to be very honest in his presentation of the facts. He seemed very sincere.

Q. Did you have any conversations with Dr. Peter Brooks [2059] about Mr. Tom Brooks?

A. No.

Q. Did you ever learn from Dr. Peter Brooks that he had confirmed the diagnosis of syphilis which had been made by Dr. Robinson?

A. No. Dr. Brooks was quite confidential about that information. As a matter of fact, I am in the same office with him and I never knew about it.

Q. How well do you know Tom Brooks?

A. I never had any personal contact with him.

Q. Dr. Yengling, was he not at one time a patient of yours?      A. Tom Brooks?

Q. Yes.      A. No, sir. No, sir.

Q. How well did you know Dr. Miles Robinson at this time, Dr. Yengling?

A. Oh, fairly well. Our offices were close together in the building.

Q. Had you known him socially at all?

A. No.

Q. Had you worked with him closely in professional connections?

A. We had done some work together.

Q. And were you acquainted with him in the activities of [2060] the bureau and the society?

A. Yes.



(Testimony of Arthur Yengling.)

Q. Were you aware, Dr. Yengling, of the letter which Dr. Robinson had written under date of August 11, 1950, in which he had rather extensively criticized the bureau?           A. Yes.

Q. When did that letter first come to your attention, if you recall?

A. Oh, I don't know when, but I remember the letter, well, probably more than one letter, of his criticism of the bureau, but that didn't impress me much one way or the other. That was his business and none of mine and he can do what he wanted to as far as I was concerned. I mean, the bureau was having some difficulty anyhow about that time and there was some question whether we would continue the medical bureau.

Q. What was the difficulty the bureau was having at that time?

A. Well, we had financial difficulties. I mean, running a medical bureau is not easy and we had financial troubles and there was some question in a good many of the doctors' minds whether we would continue a bureau or whether we would actually stop having a medical bureau.

Q. Do I gather from you that Dr. Robinson's letter reached a receptive audience among the [2061] doctors?

A. No, I don't believe so. I think most of the doctors were in favor of having a medical bureau. It covered a certain type of medical practice and we realized that medical practice in the country is being covered more and more on a prepaid basis

(Testimony of Arthur Yengling.)

and we had to do everything we could to make the bureau survive.

And we have done that very nicely at the present time, pulled our bureau out of the difficulties.

Q. Well, did the doctors who belonged to the bureau feel that Dr. Robinson's criticisms of it were constructive?

A. No, I don't believe so. I think there were too much of Dr. Robinson's ideas, I mean more than general constructive ideas. I mean, he was extremely critical of the bureau, rather than to give constructive criticism. He was criticizing the bureau, and, I think, threatening to resign from the bureau about the same time and that wasn't a good thing. Either resign or he had to stay on with it and make it operate.

Q. In fact, he did resign, didn't he?

A. Yes.

Q. You say that wasn't a good thing; what did you mean by that, what are you referring to? You said that he was going to resign from the bureau and that was not a good thing?

A. No, I didn't say that. I said his criticisms were not [2063] good.

Q. Oh. In your opinion, Dr. Yengling, had Dr. Robinson harmed himself by his criticisms of the bureau?

A. Oh, I don't believe so. I mean, I think you can practice medicine belonging to the bureau or not belonging to the bureau. I think that is perfectly possible. Dr. Campbell did it for years and

(Testimony of Arthur Yengling.)

he had a large practice and he didn't want to fiddle with the bureau. There was extra bookkeeping to belonging to the bureau, and as the years have gone on in medical practice, you had to have more and more stenographic help, and we are pretty well used to bureaus now and prepaid medical coverage. You just add more stenographers in your office to take care of that type of practice.

Q. Well, now, Dr. Yengling, you received a copy, did you not, of Dr. Robinson's complaint against the grievance committee made November the 7th or thereabouts?

A. Well, I received it, but I was out of town at that time.

Q. When did it first come to your attention, if you recall?

A. Well, I was out of town from around the middle of October until the first part of January that year, so I didn't get that. I wasn't very active in anything for a period of months.

Q. Well, then, Dr. Yengling, however, you had returned and you did attend the state grievance committee meeting [2064] which was held on the 22nd of April, 1951, did you not?

A. I was there for part of it, part of that meeting.

Q. How active a part would you say that you took in those proceedings?

A. Well, Dr. Berge on the state grievance committee told me that I was disqualified as an active member due to the fact that I was a member of the

(Testimony of Arthur Yengling.)

local county medical society here where Dr. Robinson was also a member, and he said that I could sit in on the hearing if I wanted to and I was there part of the time.

Q. Did you feel, Dr. Yengling, that you had been accused by Dr. Robinson in his complaint against the local society grievance committee?

A. That I had been accused?

Q. Yes. A. Of what?

Q. Well, I just wondered. Dr. Berge had said that since you were a member of the local society and implied that you were an interested party, I wondered if you felt if you had been accused of any wrongdoing by Dr. Robinson in connection with the grievance committee?

A. No. I mean, I was simply disqualified because I was a member of the component society and he wanted to have an impartial hearing. He might think that I might have certain prejudice and he wanted no prejudice at the [2065] meeting.

Q. On page 3 of the transcript of the state grievance committee on April the 22nd, I find the statement by you:

“May I present Dr. Stevens, a past president of the society and chairman of the grievance committee last year; Dr. Keyes, the present secretary; Dr. Tompkins, the present president.”

Was Dr. Stevens, in fact, a past president of the local society, if you know?

A. I can't remember.

Q. I believe he was a past president of the

(Testimony of Arthur Yengling.)

bureau, is that not correct?           A. I think so.

Q. Now the reference, "also the chairman of the grievance committee last year." Had Dr. Stevens' activities in connection with the grievance committee terminated?

A. I don't know when the grievance committee was terminated.

Q. And now, Dr. Yengling, although you were not planning to take active part, by your testimony, in the meeting, isn't it a fact that you did volunteer and tell the state grievance committee that Dr. Robinson's move against the local society's grievance committee had no support whatsoever?

A. I don't know what you have on that deposition there. [2066]

Q. Well, I will be glad to show it to you. I am referring, Dr. Yengling, to page 48 of the transcript of the state grievance committee hearing. I believe the transcript shows that the chairman said: "Is there anything anyone wishes to bring up?" and you stated:

"There was a large group of men there and before the entire medical society Dr. Robinson got up and gave a long discussion and he read a long letter and there was 100 per cent against Dr. Robinson. After that last meeting, it was seen it was obvious we could not go on."

And then Dr. Page said:

"What that is here and what it was about, it was a special meeting that Dr. Robinson brought up these matters."

(Testimony of Arthur Yengling.)

Do you recall making that statement at the hearing?

A. Well, I don't know exactly what that all refers to.

Q. And, now, it refers there specifically, I believe, Dr. Yengling, to pages——

A. You are jumping right into the middle of something and I don't just know what, "We could obviously not go on," I don't know what that refers to.

Q. That refers to pages 12 and 13 of the exhibit which had [2067] been submitted by the local society to the state grievance committee called: "Chronological history of events leading up to the complaints of Mrs. Noel Edwards and Mr. Thomas R. Brooks to the grievance committee, Washington State Medical Association." It is Plaintiff's Exhibit 78 and this appears to be the minutes of the meeting of November 20, 1950, of the local society.

A. Yes, but I wasn't present at that meeting.

Q. No, and that is why I was asking you about your statement to the state grievance committee that Dr. Robinson had read a long letter and there was 100 per cent against Dr. Robinson.

A. Well, I think this is referring to something else than that, because I was never at this meeting and, as far as——

Q. Well, to what do you think it could refer?

A. Well, as far as I am concerned, there was practically 100 per cent against Dr. Robinson and his activities on the grievance committee. I mean,

(Testimony of Arthur Yengling.)

I didn't know of anybody who was for him on that particular thing. I mean, that is an honest statement.

Q. Well, now, Dr. Rownd identified it, did he not, in the very next statement there? When you make this statement about the 100 per cent, he says: "That is pages 12 and 13," which refers to, of course, this chronology, which could only convey to the members of the state grievance [2068] committee anything except that it referred to the special meeting of the grievance committee—I mean of the society—on November 20th.

A. Well, I can't remember that.

Q. And now, you were not at that meeting, Dr. Yengling, but had not somebody told you that the vote there on Dr. Robinson's proposition to abolish the grievance committee had been only 15 to 14 against it?

A. No, I don't know that.

Q. You didn't know that at the time you made this statement to the state grievance committee?

A. No, I don't believe so.

Q. If you had known it, would you have made that statement?

A. Well, I wouldn't have made that statement, no.

Q. Well, then, Dr. Yengling, would you say that in view of that, that you gave the state grievance committee a fair impression of the support Dr. Robinson had in fact on the issue of the local grievance committee?

(Testimony of Arthur Yengling.)

A. Well, I didn't have very much to say there one way or the other.

Q. Now, then, you said, "After that last meeting, it was seen it was obvious we could not go on." To what did you refer there?

A. I don't know.

Q. You stated on page 51 of this [2069] transcript:

"Throughout this entire episode, every member of the medical society have tried personally to cease and desist from saying anything. Finally, I went to his close personal friend, Dr. Wallace Pratt, and had a long talk with him and he wouldn't arbitrate and he tried to get him to settle and he wouldn't arbitrate in any way whatever."

When and where, Dr. Yengling, did you have this conversation with Dr. Pratt?

A. Well, my office was quite close to Dr. Pratt, I used to see him quite frequently. He was right next to Dr.—he was between Dr. Robinson and our office.

Q. You did have a discussion with Dr. Pratt about this matter, is that correct?

A. Yes, I have talked to Dr. Pratt.

Q. What did that cover, the whole Robinson matter or the specific grievances or his attitude toward the grievance committee or what was it?

A. Well, his attitude in general toward the medical bureau, the grievance committee, and arbitration in general. I mean——

Q. Well, now, did Dr. Pratt state to you that he



(Testimony of Arthur Yengling.)

would attempt to arbitrate the matter with Dr. Robinson?

A. Well, we had a serious charge against Dr. Robinson and [2070] he wasn't co-operating with us. I mean, we were having difficulty with him and we were trying to be reasonable and Dr. Pratt was his closest friend, so far as we knew, and we wanted to settle this matter peacefully, if possible.

Q. On what basis did you arrive at the conclusion that Dr. Pratt was his closest friend?

A. Well, because he and Dr. Campbell were good friends, the closest friends, and Dr. Robinson came in with Dr. Campbell and met Dr. Pratt immediately, and I think they were social friends, as well as professional colleagues.

Q. On what did you base that? On your own personal knowledge, that they were social friends?

A. Well, I think my personal knowledge, yes. I mean, I would see them talking together and discussing things, I think they were friends. That is my impression.

Q. Well, now, did Dr. Pratt state to you that he would then get in touch with Dr. Robinson and attempt to arbitrate the matter?

A. Well, he said he would talk to Dr. Robinson, yes.

Q. By what authority, Dr. Yengling, did you talk to Dr. Pratt about the matter?

A. As a personal friend.

Q. You, however, were a member of the griev-

(Testimony of Arthur Yengling.)

ance committee, [2071] also, were you not, both the state and local grievance committee?

A. Yes, but that was long after the original grievance committee action.

Q. Did Dr. Pratt report back to you, so to speak, after a conversation with Dr. Robinson?

A. I think so.

Q. Do you remember what he said?

A. Yes, I think he said he couldn't get very far with Dr. Robinson.

Q. Is that the whole substance of it?

A. Well, he said very little else than that.

Q. Did you yourself contact Dr. Robinson with reference to arbitration? A. No, I never did.

Q. You do know, do you not, that Dr. Pratt wrote a letter to Dr. Robinson's father?

A. Yes.

Q. Do you know the date of that?

A. No, I don't know the date of it.

Q. Would the date of May 24, 1951, seem plausible to you, or reasonable?

A. I can't remember the date of that.

Q. Did he write this letter before or after Dr. Robinson was expelled? [2072]

A. Oh, before, I think.

Q. And now, the expulsion meeting was held on May 22, 1951, was it not?

A. I don't remember the date of it.

Q. Would there have been any point in Dr. Pratt getting in touch with Dr. Robinson's father after the expulsion?

(Testimony of Arthur Yengling.)

A. No, it was before his expulsion.

Q. I have a transcript here of Dr. Pratt's deposition in which a question was presented to him:

"Now, Dr. Pratt, after you talked with Dr. Robinson, did you then report back to Dr. Yengling?"

He answered:

"No, I don't think I did."

But your recollection is that Dr. Pratt did talk to you, make a report to you?

A. Not a formal report back to me. I had no standing on any committee. That was just personal interest in trying to help Dr. Robinson. I was as interested in that, I felt very sorry for Dr. Robinson. I mean, we thought he was mentally unbalanced and having delusions of persecution and if we, as doctors, could befriend him, we would try, and I talked to Dr. Pratt about that because Dr. Pratt was his close friend and I am sure he told me that he didn't get anywhere with Dr. Robinson. [2073]

Q. You stated, Dr. Yengling, that Dr. Robinson was not co-operating with the committee and its efforts on the Brooks complaint?

A. He certainly was not, no. No, he certainly was not co-operating.

Q. What did you have in mind in the way of co-operation?

A. Well, his original small charge of a dollar and a half fee that we were trying to arbitrate with Dr. Robinson, it seems to me within reason any doctor with the education and background and training of Dr. Robinson would have forgotten the matter

(Testimony of Arthur Yengling.)

when Dr. Stevens talked to him. The other doctors straightened out their difficulties and we have these things continuously, these little picayunish things like that in medical practice, and we have to give and take.

Q. You are referring to your own practice now?

A. Well, yes, my own practice. I have been called before the grievance committee, sure.

Q. On what occasions, Dr. Yengling?

A. Well, I had a question of a medical-legal case and I was called before the grievance committee. A patient complained.

Q. Well, now, what grievance committee was that?

A. Our local grievance committee here about two years ago.

Q. Was it the same one on which Dr. Stevens was chairman? [2074]

A. No, I think Dr. Lange was the chairman of this committee. He called me before the meeting and we discussed this particular case. I mean, the patient had been treated in a particular way and she thought she was unhappy about it and we had to explain her and her doctor in Yakima, where she was sent—I mean there were various ways of treating her—and that case was arbitrated without any particular difficulty with explanation to the family and to the patient.

Q. Dr. Yengling, do you recall a meeting held in the Marcus Whitman Hotel at or about May 22,

(Testimony of Arthur Yengling.)

1951, at which a discussion was had concerning Dr. Pratt getting in touch with Dr. Robinson's father?

Mr. Kimball: May 22, 1951?

Mr. Sembower: Yes.

A. No.

Mr. Kimball: I know of no such meeting.

A. No, as far as I know, Dr. Pratt did that without any meeting or anything. He did that on his own as a friendly gesture. I mean that he couldn't do anything locally with Dr. Robinson in trying to talk to him, so he tried to appeal to his father. It was a court of last resort.

Q. You were not at the annual meeting of the society held in December of 1950, I take it, since you were out of town? [2075]

A. I don't believe so.

Q. You did not hear Dr. Stevens' remarks at that meeting? I mean, you did not see them later?

A. I don't know what you are referring to.

Q. Now, Dr. Stevens on February the 21st, 1952, wrote a letter to Dr. Cunniffe, chairman of the Judicial Council of the American Medical Association. This was after the expulsion had been reversed. It is Plaintiff's Exhibit 169 for identification. I beg your pardon, it is admitted Plaintiff's Exhibit 169. I ask you to look at this and state whether you have ever seen it before.

A. Well, I have seen this letter. I think I was it at the last deposition.

Q. Was that the first time you saw it?

A. Yes.

(Testimony of Arthur Yengling.)

Q. Dr. Stevens, in his deposition, stated that he had received assistance from you in the preparation of that letter. Is that true?

A. No, I think that letter that he wrote to Dr. Cunniffe, we discussed the matter, but I mean I didn't actually help write the letter. We discussed the matter together but Dr. Stevens signed that as chairman of the grievance committee, but that was a personal letter, that was not from the grievance committee as a committee.

Q. What part, if any, Dr. Yengling, did you play in the [2076] moves leading toward a rehearing of the Judicial Council?

A. I played no part at all.

Q. Did you read Dr. Tompkins' letter to Dr. Howard of April 21, 1952? I will show it to you.

A. Not before it was sent.

Q. Plaintiff's Exhibit 206. Whether you ever saw the original or copy of that before it was sent?

A. No. No, I never saw that before it was sent.

Q. Did you later ratify Dr. Tompkins' request for a rehearing and his other representations to the Judicial Council?

A. I think we passed that at the medical society meeting.

Q. Dr. Yengling, did you hear any other witness other than Tom Brooks give direct testimony on the facts of the Brooks complaint against Dr. Robinson?

A. I heard the Edwards and the Lepianes, I think in one and their complaints. That is all.

Q. Was that at the state grievance committee

(Testimony of Arthur Yengling.)

hearing on April 22?           A. Uh-huh.

Q. Now, the board of trustees held that Dr. Robinson violated Sections 1 and 2 of Chapter II of the Principles of Medical Ethics of the American Medical Association. The minutes of the trustees to that effect were read [2077] at the meeting of May the 22nd, I believe, the expulsion meeting.

Did you read, Dr. Yengling, the canon of ethics which was referred to by the trustees?

A. I think I read it at the time.

Q. Do you remember whether it was from the edition of 1949 or 1937?

A. Well, I can't tell you that.

Q. The reason I asked you, there seems to be a little confusion because the minutes refer to Sections 1 and 2, which appears to relate to the '37 edition, and it would be two and three if it related to the more recent one, '49. The text, however, is not different materially.

I would like to ask you what you think that Dr. Robinson violated within the purview of that canon of ethics?

A. Well, I would have to read that section again.

Q. All right, I will show you the '49 edition which would be, I take it, Sections 2 and 3.

The Court: Court will recess for ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Yengling, have you had an opportunity to read the canon?

A. Yes. Well, that is the section that Dr. Robin-

(Testimony of Arthur Yengling.)

son [2078] violated and that we expelled him from the society, Section 2, Chapter II.

Q. Now, was that section, Dr. Yengling, discussed in detail by the grievance committee?

A. No, I don't think the grievance committee had anything to do with that, with this section.

Q. In any of the deliberations that you took part in when the grievance committee met with the trustees, the membership acted——

The Court: Are you talking about the state or the local grievance committee?

Mr. Sembower: I was speaking of the local grievance committee at the time, but I lost sight for a second that he was also a member of the state grievance committee.

The Court: Well, it wasn't clear to me, I thought it might not be to him.

Mr. Sembower: Yes.

Q. In connection with the state grievance committee, Dr. Yengling, was this section taken into consideration?

A. Well, I don't know, I wasn't on any of the deliberation in the state grievance committee on the Robinson case, and I mean I didn't sit in on that at all. Yes, he violated this section and the report in the state grievance committee, I remember that, but I don't remember—there were several sections that the state [2079] grievance committee said he violated. I would have to see the ruling to determine that.



(Testimony of Arthur Yengling.)

Q. Dr. Yengling, did you know that at the time of the May 22nd meeting that Tom Brooks in fact did have syphilis?

A. Well, I didn't any more than what Tom Brooks had said at his meetings. I had no way of knowing anything else.

Q. There never had really been any issue, had there, before the state grievance committee whether Tom Brooks had syphilis or not?

Mr. Rosling: Well, if your Honor please, this witness has already testified that he did not sit as a judge or as a member of the state grievance committee. He was there representing the local society. He also said he didn't sit on the issues or the discussion of the state grievance committee, and that subject, obviously, is something beyond his knowledge. [2080]

Mr. Sembower: I will withdraw that question and ask him whether in the proceedings in which you participated, either as a member of the state grievance committee or as a representative of the local society, was there ever any question raised, serious question raised, that Brooks had syphilis?

Mr. Rosling: If your Honor please, I object to the question because there is no evidence here at all that Dr. Yengling ever sat on the state grievance committee in consideration of this offense.

The Court: Well, except he was there at one time. I am not sure just what your question covers.

Mr. Sembower: I am just asking if he heard

(Testimony of Arthur Yengling.)

anything at the time he was there, either as an individual or a member of either——

The Court: In whatever capacity?

Mr. Sembower: Yes.

The Court: Yes, all right, he may answer that question.

A. Anything besides what Tom Brooks said?

Q. (By Mr. Sembower): That is correct.

A. No.

Q. Was there any question that Brooks had syphilis?

A. No, I think Dr. Robinson told him that he had syphilis and the reports had been checked and rechecked, as I [2081] remember it, and I think that was enough evidence. I don't know that we had any—I never heard of any other evidence, except that later I think Dr. Peter Brooks, as I know about, had it rechecked, but I didn't know about it at that time.

Q. That recheck of Dr. Peter Brooks only confirmed it, did it not?

A. I don't even know what Dr. Brooks' tests were to this date.

Q. Well, now, Dr. Yengling, what about Dr. Robinson's conduct that doesn't conform with this ethic so far as the Brooks case is concerned?

A. Well, Dr. Robinson blackmails an individual and threatens to reveal information. I mean, that certainly is against this section in the book of ethics.

Q. Well, now, Dr. Yengling——

(Testimony of Arthur Yengling.)

A. That is a serious problem. What can we do about it but take action on it?

Q. Was it not a fact that Brooks had refused to take treatment?      A. I don't know about that.

Q. Well, you had heard the testimony, had you not?

A. Well, I don't know too much about it, how much he refused. I understand he refused, but I didn't know very little about it. [2082]

Q. If a man has a serious and dangerous disease and he refuses to take treatment, do you not think that responsible members of his family should be informed?

A. Well, I don't think the doctor should threaten him, blackmail him, to get a letter and say that, "I will tell your family you have syphilis if you don't give me that letter." I don't think that that is the way to do it.

Q. All right, on what basis do you say that it was a threat?

A. Well, he definitely threatened him. He said, "I will tell your family if you don't give me that letter."

Q. On the basis of what testimony do you predicate your statement?

A. On the basis of Tom Brooks.

Q. On anything else? Anything else but that? On what other testimony?

A. Well, Tom Brooks, and I think that the family, probably, through the Edwards. I can't re-

(Testimony of Arthur Yengling.)

member the details of it, but I think they more or less confirmed that same information.

Q. Well, Edwards was the only other one that testified, was he not?

A. But I think that that all came out in the case. I can't remember just where it is.

Q. You just have kind of a vague [2083] feeling?

A. Yes, sure. It happened six years ago, why wouldn't it be vague?

Q. At the time was it vague, though?

A. No, very definitely not.

Q. Did you not also know that Mr. Edwards had conceded that Dr. Robinson had not used the word "syphilis" there?

A. Well, that is all right, he implied what he had. He had a disease of his blood, he said. You didn't have to say "syphilis." The public know what you mean when you say you have a disease of your blood, I want to take a test. They know what you are testing for. I mean, that implication is all you need there.

Q. As a matter of fact, it was a matter, at the most, of inference, wasn't it, on the part of Tom Brooks as to whether it was a threat or not?

A. Well, I thought that there is some question about that, whether Dr. Robinson actually used the word "syphilis." I can remember there was a question about that. I can't remember the depositions or the testimony, but whether he used the word "syphilis" or not, he implied the disease.

(Testimony of Arthur Yengling.)

Q. Did you ever consider in this connection, Dr. Yengling, the difference between words which amount to a warning and words which amount to a threat?

A. Now, this wasn't any warning. I heard Mr. Brooks give [2084] his testimony just exactly what happened and it was very graphic and I can still remember that part today, and he said, "If you don't give me the letter, why, I will do this and that." And I don't think Mr. Brooks was doing anything but repeating that exactly the way it happened.

Q. And was he antagonistic at the time?

A. Not particularly.

Q. He was angry, was he not?

A. Not particularly.

Q. Just calm and judicial?

A. No, but he thought it was a serious matter and he had to get it. He was going to have a lawsuit if we didn't do something about it for a man that threatened him.

Q. Dr. Yengling, did you give any attention to the fact that Brooks, as a result of this incident, did in fact undertake treatment?

A. I don't know whether he has or not.

Q. It was with Dr. Peter Brooks right in your own office, was it not?

A. Well, I understand he takes care of him, but I don't know anything about Mr. Tom Brooks and his treatment. [2085]

## MRS. NOEL B. EDWARDS

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

## Direct Examination

By Mr. McNichols:

Q. Would you state your name, please, Mrs. Edwards?  
A. Mrs. Noel B. Edwards.

Q. Where do you reside, Mrs. Edwards?

A. 1254 Bell Street, Walla Walla.

Q. You are the wife of Noel Edwards, who is a defendant in this lawsuit?  
A. Yes.

Q. And you are also the Mrs. Edwards who registered a complaint or protest of some nature against Dr. Robinson?

A. I registered an inquiry.

Q. You registered what?

A. An inquiry, I made an inquiry regarding Dr. Robinson's charge.

Q. And that was made to Mr. Fullerton, was it not?  
A. Yes. [2086]

Q. On the 30th of August, 1950? Does that date—  
A. I believe that is correct.

Q. When was the first time, Mrs. Edwards, that you communicated with Mr. Fullerton?

A. That day I made the complaint.

Q. There is an indication here from the record of the state grievance committee that you had communicated with him before with respect to this matter and he told you that a complaint wasn't warranted. Do you recall that?  
A. No, I do not.

(Testimony of Mrs. Noel B. Edwards.)

Q. I will read this brief passage from the minutes of the state grievance committee and ask you if it refreshes your memory at all. You are Mrs. Joyce Edwards, for the record?      A. Yes.

Q. Mrs. Joyce Edwards was called as a witness and answered questions by Dr. Berge with respect to this matter about the child. Dr. Berge said:

“Are you quite sure it was Epsom salts?”

And you answered:

“I am quite sure that is what he told her. He said he didn’t think we would give it and she couldn’t go to sleep and was crying. When I got this statement, I called. The reason I made the check, we hadn’t gotten the prescription and he said [2087] it was for the phone call. I didn’t think he was warranted in that. In my opinion, it was my youngster’s life if we couldn’t make her vomit, and he said that was definitely what it was for. I called Mr. Fullerton and asked if I could make a complaint and he said it wasn’t warranted.”

Do you recall making that statement at the state grievance committee meeting?

A. I don’t remember.

Q. You what?

A. I don’t remember that far.

The Court: She doesn’t remember it, she says.

Q. (By Mr. McNichols): Well, now, Mrs. Edwards, did you at any time state to anyone that you had an intention to sue Dr. Robinson over this matter?      A. No.

Q. To your knowledge, did your husband ever

(Testimony of Mrs. Noel B. Edwards.)

make such a statement?           A. No.

Q. Did you and he ever discuss it?           A. No.

Q. Did it ever enter your mind?           A. No.

Q. During the time, Mrs. Edwards, when you talked to Dr. Robinson when he came to see you shortly after you had [2088] made this complaint, he came out to your house one day and talked to you, I believe, didn't he?

A. He came out to the house to get the letter.

Q. He talked to you and your mother?

A. Yes.

Q. Now, all during that time, his attitude was friendly and there was no animosity of any kind between you, was there?           A. No.

Q. In fact, you joked with him?

A. I don't remember that I joked with him, but I mean there was no animosity.

Q. Did you go to another doctor, Mrs. Edwards, in the first week of October, 1950?

A. Not that I can recall.

Q. Did you ever take any further treatments from Dr. Robinson after this incident?           A. No.

Q. And now, the incident with the child occurred in the early part of June, is that correct?

A. I believe so.

Q. And your complaint was made on the 30th of August?           A. Yes.

Q. Did you get a bill for this dollar and a half each month the first of each month? [2089]

A. I can't recall.



(Testimony of Mrs. Noel B. Edwards.)

Q. In any event, approximately a three-month period expired between the day that the incident occurred to the child and the time you made any complaint?      A. Yes, I believe so.

Q. Would you say, Mrs. Edwards, that you had not telephoned Mr. Fullerton as you indicated at the State grievance committee hearing?

A. I can't recall that I did. It is possible. [2090]

\* \* \*

Mr. Sembower: Your Honor, at this time then I will read quite a short transcript of deposition of George F. Lull on written interrogatories in this case taken at Chicago, Illinois, March 19, 1956. I will simply read this into the record because it is quite short.

The Court: All right.

Mr. Sembower: (Reading):

### DEPOSITION OF GEORGE F. LULL

“George F. Lull, having been first duly sworn, deposeth and saith as follows:

“Interrogatory No. 1. State your name [2094] and address.

“A. George F. Lull, 535 North Dearborn Street, Chicago, Illinois.

“Interrogatory No. 2. Do you hold an official position in and with the American Medical Association, and if your answer is ‘Yes,’ how long have you held that position?

(Deposition of George F. Lull.)

“A. Yes. Secretary and general manager since January the first, 1956.

“Interrogatory No. 3. Do you hold an official position in connection with the Judicial Council of the American Medical Association, and if your answer is ‘Yes,’ what is that position?

“A. Yes. I am a constitutional secretary of the Judicial Council, without vote. The actual work of the secretary is carried on by an executive secretary.

“Interrogatory No. 4. Have you held an official position in connection with the said Judicial Council during the last five years, and if your answer is ‘Yes,’ what position or positions have you held?

“A. Yes. The same positions as stated above.

“Interrogatory No. 5. In that certain deposition of your testimony taken upon oral [2095] interrogatories in the case of Robinson v. Lull, et al., Civil Action No. 55 C 1053 in the District Court of the United States for the Northern District of Illinois, Eastern Division, on December 15, 1955, at Room 1414, 105 South LaSalle Street, Chicago, Illinois, the following questions were propounded to you and you gave the following answers at page 72 of the transcript, did you not?

“(a) Q. Does the AMA have a policy with respect to whether an appellant should be held in status quo pending his appeal or should be expelled?

“A. Insofar as the American Medical Association is concerned, he should remain a member until final disposition of his case is made.

(Deposition of George F. Lull.)

“I now ask you that same question in this case. Is your answer to this question the same? If not, what is your present testimony and why are you changing it?

“A. I do not recall this question. My answer is that there is no fixed policy of the AMA. These matters in constituent and component societies depend upon their own bylaws. My [2096] answer is the same as given before, except that I have clarified it, as apparently the answer was an expression of my own opinion.

“Interrogatory No. 6. In the said deposition the following question was propounded to you, and you gave the following answer at page 74 of the transcript, did you not?

“(a) Q. Dr. Cunniffe expressed a very strong feeling along that line?

“A. I have the same feeling, that a local society, in case of an appeal, should hold the man in status quo until his appeal is heard, if they know that he has made an appeal.

“I now ask you that same question in this case. Is your answer to this question the same? If not, what is your present testimony and why are you changing it?

“A. I do not recall the question and I do not know, of course, how Dr. Cunniffe felt. The answer is apparently an expression of my own opinion.

“Interrogatory No. 7. In the said deposition, the following questions were propounded to you, and

(Deposition of George F. Lull.)

you gave the following answers at page 99 of [2097] the transcript, did you not?

“(a) Q. I have here, Dr. Lull, a photostatic copy of what purports to be a letter from Dr. Ralph Keyes, president of the Walla Walla Medical Society, to Dr. Reuben A. Benson, president of the State society, dated February 18, 1952, and he says here:

“‘We wish to advise that we are not at this time taking any action in this matter until the Society has received certain information from the Judicial Council of the AMA, which has been requested, and until the decision has been reached as to whether or not the decision will be appealed to the Board of Trustees of the AMA.’

“Dr. Lull, are you aware of any procedure within the AMA which would have permitted an appeal of this decision of the Judicial Council to the Board of Trustees? A. I am aware of none.

“(b) Q. Do you know of any correspondence or telephonic request that you received [2098] from any Society officials in Washington asking that such an appeal be taken?

“A. I don't recall any. I don't recall any.

“(c) Q. Do you have any idea to what he may have referred here?

“A. No, I don't know what he means because the opinion of the Judicial Council is final in these cases as far as the AMA is concerned. In fact, the Judicial Council serves under the House of Delegates, and not the Board of Trustees.

(Deposition of George F. Lull.)

“(d) Q. Would there be any appeal to the House of Delegates?

“A. No; I have never known any.

“(d) Q. Was there any attempt made to appeal it to the House of Delegates that you know of?

“A. No, not to my knowledge.

“I now ask you that same question in this case. Is your answer to those questions the same? If not, what is your present testimony, and why are you changing it?

“A. I do not recall the specific questions, but my answers would be the same. [2099]

“Interrogatory No. 8. In the said deposition, the following questions were propounded to you, and you gave the following answers at page 108 of the transcript, did you not?

“(a) Q. Dr. Cunniffe in five places in his deposition states he was totally unaware that Dr. Robinson had lost his hospital privileges during the period of the expulsion.

“Do you know of your own knowledge whether Dr. Cunniffe had forgotten, had known it, or what the situation was?

“A. No, I do not. I have no knowledge of what he knew about it. We took it for granted that he would be reinstated when the telegram went out.

“(b) Q. Reinstated to his hospital privileges?

“A. To his county society, but nothing about his hospital privileges. That was something that we have no control over.

“(c) Q. You say you took it for granted that

(Deposition of George F. Lull.)

he would be?           A. Yes.

“(d) Q. Restored. What if the local society refused to do so, what would you have [2100] done?

“A. Well, I don’t know.

“(e) Q. Has a local society ever refused to do so?           A. Not to my knowledge.

“(f) Q. Do you know of any other instance than this where the local society has refused to construe a telegram, such as the one you sent to them, as indicating the decision of the Judicial Council?

“A. I don’t recall any.

“I now ask you those same questions in this case. Is your answer to these questions the same? If not, what is your present testimony, and why are you changing it?

“A. I do not recall the specific questions and answers. To Question (a) I would answer that I do not know whether Dr. Cunniffe had forgotten or had known it. I have no knowledge of what he knew about the case.

“To Question (b), to clarify it, I would change the answer to read that the American Medical Association had nothing to do with his hospital privileges. We have no control over [2101] matters of that kind.

“To Question (c), for purposes of clarification, I would say that it was not taken for granted that he would be restored to his hospital privileges.

“To Question (d) I would state again that I do not know.

(Deposition of George F. Lull.)

“To Question (e) I would say not to my knowledge.

“To Question (f), I do not recall whether they did or did not.

“The answers to these questions have been changed somewhat for the purpose of clarification.

“Interrogatory No. 9. I now ask you if on page 123 of the said deposition, did you not give the following answer to the question which was propounded to you:

“(a) Q. Dr. Lull, was this (the decision) prepared according to the standard procedure for rendering of decisions of this kind?

“A. I believe it was, yes.

“I now ask you that same question in this case. Is your answer to this question the same? If not, what is your present testimony and why are [2102] you changing it?

“A. I do not recall the specific question. What decision does this refer to? In order to clarify this, I would say that decisions of this kind are rendered by vote of the Judicial Council and are prepared by others than myself, and I assume that both the rendering of the decision and the preparation of the decision were carried out as is customary.

“Interrogatory No. 10. In the said deposition, the following question was propounded to you, and you gave the following answer at page 132 of the transcript, did you not:

“(a) Q. Well, now, during the pendency of a

(Deposition of George F. Lull.)

motion for rehearing, would the doctor still be under suspension then, expulsion?

“A. In this case? No, he shouldn’t have been. He was, as far as the AMA was concerned, he was reinstated at the time the decision was made in the first hearing.

“I now ask you that same question in this case. Is your answer to this question the same? If not, what is your present testimony and why are [2103] you changing it?

“A. I do not recall the specific question. In order to clarify my answer, I would say that the membership in the local society is dependent upon the bylaws of the local society. He was a member of the AMA. The answer was changed to clarify and because I improperly used the word ‘reinstated’ as far as the American Medical Association is concerned. The answer given was a matter of my personal opinion apparently.

“Interrogatory No. 11. In the said deposition, the following questions were propounded to you, and you gave the following answers at page 140 of the transcript, did you not?

“(a) Q. You were at this meeting (April meeting, Judicial Council)? A. I was there.

“(b) Q. What did the Judicial Council consider with respect to the granting of this rehearing?

“A. Well, I don’t recall the details. But that was evidently the opinion of the chairman when the request for rehearing was mentioned.

“(c) Q. Well, now, did it act solely upon the



(Deposition of George F. Lull.)

letter [2104] of Dr. Tompkins there was a shortness of time for them to prepare, did the Council act solely on that basis?

“A. I presume so, plus what the chairman said about it, emphasizing the fact that it was procedure only that should be considered.

“(d) Q. Well, now, did anybody present to the Council any argument on behalf of Dr. Robinson there was adequate time?

“A. Not to my knowledge.

“(e) Q. In other words, the Council, as you heard it, only heard the point made by the Walla Walla Society that there wasn't time for them to get ready, they didn't hear any argument so far as Dr. Robinson's position might have been in the matter?

“A. Not that I recall, no, they didn't.

“I now ask you those same questions in this case. Are your answers to these questions the same? If not, what is your present testimony and why are you changing it?

“A. I do not recall the specific questions [2105] and answers.

“In answer to Interrogatory (a), I was at this meeting.

“In answer to Question (b), I do not recall the details.

“In answer to Question (c), I presume so, although I do not recall.

“In answer to Question (d), not to my knowledge.

(Deposition of George F. Lull.)

“In answer to Question (e), not that I recall.

“Interrogatory No. 12. In the said deposition, the following questions were propounded to you, and you gave the following answers at page 174 of the transcript, did you not:

“(a) Q. Dr. Lull, if the circumstances are that the doctor is without his practice, is languishing in his practice, is without hospital connections, has had his insurance cancelled, and his reputation is suffering, if those circumstances are present, would you then act more rapidly than the reasonable length of time?

“A. I suppose. This was in, when, after [2106] the San Francisco meeting?

“(b) Q. This is the Chicago meeting.

“A. The Chicago meeting.

“(c) Q. The 9th of June, 1952?

“A. Remember, when one of these meetings occurs, we have a mass of work of all types thrown upon us following the meeting. We have the minutes of the House of Delegates. We have the minutes of the Board of Trustees. We have all of this thrown at us.

“Now, that isn't too long a time. Of course, we didn't know all of these things were supposed to be happening to Dr. Robinson.

“I might say that we felt very kindly toward Dr. Robinson; everybody did, and we would have done the best we could under the circumstances. We didn't know anything about this catastrophe that had happened to him, allegedly.

(Deposition of George F. Lull.)

“(d) Q. But the thing that comes to my mind, Dr. Lull, is that Dr. Robinson had telephoned you and told you he was in that predicament. He had wired, he had [2107] written many times. Our whole deposition here is concerned with one of those incidents after another. Would not those bear home to you his predicament?

“A. He was supposed to be a member of his County and State society as far as we knew. He was supposed to be because he had been reinstated back after the first hearing.

“(e) Q. Well, now, as I recall, you stated earlier that you were under the impression he always had his privileges. Do you mean he was deprived of his privileges up to December?

“A. No. I had no knowledge of whether he was deprived of his privileges between the time of the action of the local society and the report received from the Judicial Council, but I certainly was aware of the fact that after the Judicial Council's report was received, I took it for granted that he would be reinstated if he had been suspended.

“I now ask you those same questions in this case. [2108] Is your answers to the questions the same? If not, what is your present testimony and why are you changing it?

“A. I do not recall the specific questions and answers.

“In answer to Question (a), I would say that I would not act more rapidly than the reasonable length of time.

(Deposition of George F. Lull.)

“In answer to Questions (b) and (c), I would give the same answers.

“In answer to Question (d), I do not recall the contents of the letters, nor do I recall the subject matter of the telephone conversations. I assume that he was a member of his County and State societies.

“To Question (e), I would give the same answer.

“Interrogatory No. 13. Has anyone discussed these interrogatories with you? If your answer is ‘Yes,’ state who that person or those persons were; when and where and in what manner the discussions took place, and in detail what was said to you, and what you said.       A. No.”

And that ends the reading of the [2109] transcript.

Mr. McNichols: Mr. Davis.

### JOHN E. DAVIS

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

#### Direct Examination

By Mr. McNichols:

Q. Would you state your full name, please, Mr. Davis?       A. John E. Davis.

Q. And where do you reside?

A. 525 Sheridan Road, Walla Walla.

Q. And where are you employed, Mr. Davis?

A. The Walla Walla Valley Medical Service Corporation.

(Testimony of John E. Davis.)

Q. And what is your capacity there?

A. Manager.

Q. And how long have you been in that position?

A. Since April 1st, 1952.

Q. Did you immediately succeed Mr. Fullerton in that job?      A. Yes.

Q. Mr. Davis, there has been some discussion today in the testimony here and during the deposition we discussed it with respect to whether or not you have in your files in the medical bureau any correspondence with respect to two other complaints which have been referred to as [2110] having been received by the grievance committee at the same time the Robinson complaint was received. Do you recall those discussions?

A. Relative to the other—

Q. The other complaints?

A. The other complaints before the grievance committee? Yes, I remember.

Q. Did you make a search of your files to attempt to find any papers relating to those complaints?      A. Yes, we searched the files.

Q. Were you successful in finding any such papers?      A. We found nothing.

Q. Can you tell us approximately what the gross income of the medical bureau was in the year 1950?

A. Do you mind if I refer to my notes here?

Q. No, I prefer that you do, Mr. Davis.

Mr. Kimball: I wonder if this is material?

Mr. McNichols: Are you objecting?

Mr. Kimball: Yes, I was objecting.

(Testimony of John E. Davis.)

Mr. McNichols: Oh.

The Court: What is the purpose of it?

Mr. McNichols: Well, your Honor, just attempting—

The Court: To show the interest of the defendants in the bureau?

Mr. McNichols: The background, the interest of the [2111] defendants in this matter.

The Court: I think there were questions and answers as to what percentage of their income came from the bureau. I suppose it is along the same line. Objection overruled.

Mr. McNichols: It will be very brief.

Q. What is it you have there, a breakdown of the figures?

A. This is a breakdown of the bureau income, 1950 to '55.

Q. And that shows the income from the bureau and the income—

A. Bureau contracts and then from the welfare, which is a separate contract.

Q. Would you just go through, then, each of the six years that you have there and state the year and the income from the bureau, the income from the welfare program, and the total income?

A. Now, there is one thing about this welfare income I want to call to your attention. This includes Walla Walla, Columbia, Garfield and Asotin Counties.

Q. All the doctors in those counties?

A. That's right.

(Testimony of John E. Davis.)

Q. That participate?

A. The income from the welfare includes all of the recipients in those four counties.

Now, in 1950, the income from the bureau contracts was \$63,096.35; from welfare, [2112] \$78,897.05.

1951, the bureau——

Q. Could you give us that total, then?

A. The grand total?

Q. Yes.

The Court: Contracts and then the other you said was welfare?

A. Welfare.

The Court: All right.

A. The grand total is \$141,993.40.

In 1951, the bureau income, \$82,635.37; from welfare, \$68,443.50; grand total of \$151,078.87.

In '52, the bureau income, \$91,521.54; welfare income, \$60,031.80; grand total, \$151,553.34.

In '53, the income from bureau contracts was \$102,821.88; welfare was \$82,224.87; a grand total of \$185,046.75.

In 1954, the bureau income, \$93,867.00; from welfare, \$81,862.00; a grand total of \$175,729.00.

In '55, the income from the bureau contracts was \$102,585.36; and from the four counties in welfare, \$84,075.37; a grand total of \$186,660.73.

Q. (By Mr. McNichols): How many doctors, Mr. Davis, participate in those funds insofar as the bureau income is concerned?

A. Approximately 55. [2113]

(Testimony of John E. Davis.)

Q. They are the members of the Walla Walla Valley Medical Service Corporation?

A. That's right.

Q. That includes doctors as far as Pomeroy, does it not?      A. Yes. Some in Asotin.

Q. Pardon?      A. Some in Asotin, too.

Q. In other words, this organization includes doctors from the surrounding area?

A. That's right.

Q. How many share in the proceeds from what you have referred to there as—what is it, welfare?

A. Yes. That is all of the doctors in Walla Walla, Columbia, Garfield and Asotin Counties.

Q. Do those figures that you refer to as the welfare figures represent some of the money which comes entirely from the State of Washington?

A. That is all contract money from the state.

Q. And that is based upon the contract between the county bureau and the state association and the state?

A. Well, the Washington State Association, that is, the Washington Physicians' Service, makes that contract for all of the 23 bureaus in the State of Washington.

Mr. McNichols: I think that is all, Mr. [2114] Davis.

\* \* \*



DEPOSITION OF DR. LEROY CARLSON

Mr. Sembower (Reading, continued):

Q. Did you understand that my father was contacted to extricate me from a serious predicament?

A. Well, yes. I would say yes.

Q. Just what predicament was I supposed to be in? A. You were expelled by the Society.

Q. And my predicament was that I was not out in the cold as it were, is that your understanding?

A. I don't mean quite out in the cold.

Q. Well, let me rephrase it: That I was expelled; that was my predicament.

A. Well, of course, you have to add more than that.

Q. What would you add to it in order to give a satisfactory answer?

Mr. Rosling: Well, that is all based on hearsay you may have received, Dr. Carlson, from some one else.

A. Well, now, I am a little vague on this; well, yes, I would say it is indirect.

Q. (By Dr. Robinson): Well, this discussion over my father, was it held in a meeting, formal or informal, of [2120] officers, including yourself.

A. Yes, I would say that.

Q. Do you recall what meeting it was held in?

A. Well, it seems to me it was in a meeting of the Board of Trustees in the Marcus Whitman Hotel, I don't recall when.

Q. In the Marcus Whitman Hotel? Was that before or after my expulsion?

Mr. Rosling: If you know, Doctor.

(Deposition of Dr. Leroy Carlson.)

A. I don't know. I would say after.

Q. (By Dr. Robinson): At the meeting where I was expelled, did you come out of the expulsion meeting several times to advise me that a vote of some kind was about to be taken?

A. I did not come out several times.

Q. How many times did you come out so far as you can remember?

A. I went out once to tell you that we were about to vote.

Q. Did you come out again?

A. I don't recall. Yes, I did, to bring you back in.

Q. Who told you to come out and talk to me?

A. Dr. Tompkins. [2121]

\* \* \*

#### ALVIN R. KINCAID

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

#### Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Alvin R. Kincaid.

Q. And where do you reside, Dr. Kincaid? [2124]

A. In John Day, Oregon.

Q. Do you also have a professional address there? A. Yes, I do.

(Testimony of Alvin R. Kincaid.)

Q. Do you have an address at any other locality in that area?

A. I also have an office at Prairie City.

Mr. Rosling: Where?

A. Prairie City.

Q. (By Mr. Sembower): The acoustics are not so good in some parts of the room, Dr. Kincaid, so if you could speak rather strongly, I think it would help.

Are you a member of the American Medical Association, Dr. Kincaid? A. Yes.

Q. Are you a member of any other professional societies or associations?

A. The Oregon State Medical Society.

Q. Do you have a local society in your community?

A. We are just drawing up the constitution and bylaws. We are rather isolated down there and there are only five of us, so that is enough now so we can have a local society.

Q. And that is now in formation?

A. Yes.

Q. Did you formerly practice in Walla Walla, Dr. Kincaid? [2125] A. Yes, I did.

Q. And when did you practice in Walla Walla?

A. I started here September, 1950, until March of 1952.

Q. And then after you left Walla Walla, where did you go then?

A. To Prairie City, Oregon.

Q. Where you now have your office there?

(Testimony of Alvin R. Kincaid.)

A. One office there.

Q. And then later, you opened an office at John Day?

A. Yes. A group practice, three of us.

Q. And have you been practicing continuously there since? A. Yes.

Q. While you were in Walla Walla, Dr. Kincaid, were you a member of the local medical society? A. Yes, I was.

Q. Directing your attention to the date of on or about May the 22nd, 1951, I will ask you if you remember attending a meeting of the society at that time? A. I do.

Q. I will show you the minutes, Dr. Kincaid, of the meeting of the Walla Walla Valley Medical Society held at St. Mary's Hospital, May 22nd, 1951, and direct your attention to the members present and ask if you find your name there?

A. My name is here. [2126]

Q. If you want to refer to the minutes at all, Dr. Kincaid, I will have the book open here.

Dr. Kincaid, do you remember anything particularly which happened at that meeting?

A. Well, there was a big discussion regarding Dr. Robinson, who was a member of the society.

Q. And was there action taken that night by the society with respect to Dr. Robinson?

A. I think that was the night that he was voted to be expelled from the society.

Q. Yes. Do you remember, Dr. Kincaid, the dis-

(Testimony of Alvin R. Kincaid.)

cussion which preceded the expulsion of Dr. Robinson?

A. It was a lengthy meeting and I don't remember everything. I do remember that Dr. Page and Dr. Tompkins had been to Seattle or over to the state medical society and they had come back and——

Mr. Rosling: If your Honor please, I am going to ask that that statement of the witness be stricken because it is purely a volunteer statement and it is based, obviously, upon hearsay.

The Court: Unless they said so. I understood him to testify that they had been there.

Mr. Rosling: He said they had been there and that is all.

The Court: I see. Well, he wouldn't know that of his [2127] own knowledge.

Q. (By Mr. Sembower): Dr. Kincaid, about how long did the meeting take, the portion of the meeting relating to Dr. Robinson, if you recall?

A. Just the portion relating to Dr. Robinson?

Q. Well, the whole meeting, if you recall, the length of the meeting, and so on?

A. About two and a half hours, at least, and most of it was in regard to Dr. Robinson, as I remember.

Q. Now, who were the members of the society particularly that you remember speaking during the deliberation concerning Dr. Robinson?

A. Dr. Tompkins and Dr. Page.

Q. Anyone else?

(Testimony of Alvin R. Kincaid.)

A. I particularly remember Dr. Cowan getting up and saying something in favor of Dr. Robinson.

Q. Was Dr. Robinson present all the time during this meeting?

A. No, he was asked to leave after he had talked, I think, himself.

Q. Now, you testified that Dr. Tompkins had spoken at the meeting. Do you recall the gist of his remarks?

A. His remarks were along the line that the State of Washington had set up some rules and regulations in regard to patient complaints and that this was one of [2128] the first cases and that we had to act in expelling the member in question because we would be upholding the state society. That is the way I remember it.

Q. Did he make any comments to the meeting about having been to Seattle to confer with state officials there?      A. Repeatedly.

Q. And what did he say with respect to that, if you recall?

Mr. Rosling: Is this Dr. Cowan?

The Court: No, this is Dr. Tompkins, as I understood it.

Mr. Sembower: Yes, it is Dr. Tompkins to whom you are referring?

A. Yes.

Q. Yes

A. Well, he said we almost had to vote the expulsion of Dr. Robinson to uphold what was set up in the state society.

(Testimony of Alvin R. Kincaid.)

Q. And do you remember anything further that he said along that line? Let me ask you this, did he refer to the state grievance committee setup in his remarks?

A. Yes, that was discussed very much in detail.

Q. And what did he say about that, if you recall?

A. Well, it was set up over there and we were following the pattern here in our local society and we would have to go along with the state. [2129]

Q. Well, then, I believe you testified a moment ago that Dr. Page spoke. Do you remember the gist of his remarks?

A. His remarks were the same idea, that here the state had set up something that was new and good and we had our own committee and we would have to go along with the state, and if we didn't expel Dr. Robinson, it would upset the whole new plan that was being organized, or I had the idea it was new, anyway. It was new to me.

Q. And then about how long did the speeches occupy, if you recall, prior to the presentation of the issue to a vote, the issue of expulsion?

A. I wouldn't remember exactly how long, but I know they were quite lengthy speeches.

Q. Was any reference made by Dr. Tompkins to Dr. Robinson's mentality, state of his mental condition, if you recall?

A. I recall that was referred to.

Q. Do you remember the gist of his remarks along that line?

(Testimony of Alvin R. Kincaid.)

A. I remember paranoid being mentioned, and Dr. Robinson might be dangerous and—to some of the members of the society.

Q. Now, I believe you also testified that Dr. Walter Cowan had spoken. What was the gist of his remarks, Dr. Kincaid, if you recall?

A. I recall his remarks as stating that he thought this was [2130] far too severe an action to take against a member of the society; that any of us might make mistakes; and that he was more in favor of a warning, a reprimand, and not an expulsion.

Q. Was there any reaction on the part of the other members to Dr. Cowan's remarks, if you recall?

A. Would you please state the question again? I didn't—

Q. Well, did other speakers who had spoken, Dr. Tompkins or Dr. Page, did they have any rejoinder to make to Dr. Cowan's remarks, if you recall?

A. All I can remember is that we were told we had to vote to uphold the state society and the local society.

Q. Do you recall how you voted, Dr. Kincaid, when the matter was placed to a vote?

A. I voted against expelling Dr. Robinson. I think I showed my vote to another member there so I wanted proof that I voted that way.

Q. Who was the other member, Doctor?

A. Dr. Ivan Bohlman.



(Testimony of Alvin R. Kincaid.)

Q. Did Dr. Bohlman make any remarks that you recall at the meeting?

A. I think he did make remarks similar to what Dr. Cowan made. Not as lengthy, but showing he wasn't in favor of expulsion.

Q. Do you recall what the vote was? [2131]

A. Yes, I remember how many were against it.

Q. How many were against it, if you recall?

A. Five was marked off on the blackboard. The votes were marked as they were opened on a blackboard so everybody could see, and there were four and then the fifth one. They were crossing them across with the fifth one to make five.

Q. Do you have any doubt about your testimony that there were five votes against expulsion?

A. Well, that always stuck in my mind that there were five, because there were four marks and they made the fifth one across and that is as far as they went in that row.

Q. Did Dr. Page make any comment about the votes that had been cast against the expulsion, Dr. Kincaid, if you recall?

A. I think Dr. Page did make very definite remarks, short and quite cryptic, that there should have been a unanimous vote, too bad that there wasn't a unanimous vote, and that it should have been, and that is all I remember about his remarks afterward.

Mr. Sembower: I think that is all, your Honor.

(Testimony of Alvin R. Kincaid.)

Cross-Examination

By Mr. Kimball:

Q. Dr. Kincaid, at this meeting you have just testified to, [2132] do you remember that the summary of your board of trustees was read in full to the society that evening? I think it was read by Dr. Tompkins or possibly by Dr. Tompkins and Dr. Carlson. Do you remember that?

A. There was something read. I certainly don't remember the reading as well as the discussion.

Q. You referred to the state grievance committee. Do you also remember that the opinion of the state grievance committee was read as part of that summary? Do you recall that?

A. That, I believe, was read there that night.

Q. Do you remember Dr. Robinson speaking in his own defense at that meeting?

A. I remember he talked at the first of the meeting.

Q. Did he have considerable time on the floor in his defense?

A. Not in comparison to the length of the meeting.

Q. Well, would you care to make an estimate, whether it was forty minutes or an hour or twenty minutes, or how long would you recall it as being?

A. It would merely be a guess, but I would guess about twenty minutes.

Q. Do you recall whether or not he distributed

(Testimony of Alvin R. Kincaid.)

some documents to the society that night in connection with his defense? [2133]

A. I do not recall.

Q. Do you recall that a witness, a Mr. Edwards, was presented at that meeting for some statement or testimony?

A. There was some non-professional man talked. I don't remember his name.

Q. And those were all heard by you and the other members in attendance at that meeting?

A. Would you please state your question again?

Q. Dr. Robinson and Mr. Edwards, if that were the person, were heard by you and the other members in attendance at that meeting?

Mr. Sembower: Your Honor, the question might be slightly rephrased, I think, because the witness wouldn't know whether some had left the room or something of that sort. I might suggest it might be phrased that he heard them presented.

The Court: Well, yes.

Mr. Kimball: Well, I said those in attendance. If they weren't in there, I presume they weren't in attendance. If they were there, I presume they were in attendance.

The Court: I assume your question implied, was heard by those in the meeting?

Mr. Kimball: That's right, that is what I intended.

The Court: It may be considered in that [2134] way.

(Testimony of Alvin R. Kincaid.)

A. Would you state your question? I lost track here where you are.

Q. (By Mr. Kimball): Well, I will try to make it a little simpler, Doctor.

Dr. Robinson's remarks that evening and such other evidence or statements that were made by a non-professional person, if there was one there, were heard by you and the others that were in the meeting at the time you heard it, were they not?

A. I think Mr. Edwards just came in and when he was through talking or being questioned, he left, and Dr. Robinson, I know, left the room shortly after he had talked. I believe he was asked to leave.

Q. Dr. Kincaid, the ballots that were taken were secret ballots, were they not?

A. They were on slips of paper and handed in to somebody that collected them and then they were unfolded.

Q. That is what I mean by secret?

A. Yes.

Q. Dr. Kincaid, you didn't feel compelled to vote in any way except as you desired, did you?

A. Well, there was plenty of pressure brought to urge you to vote a certain way.

Q. You mean by that arguments made on both sides, don't you?

A. Most of the argument was that you should vote to expel [2135] Dr. Robinson.

Q. Did you take the floor and make an argument?

A. I don't think anybody called on me to, and I don't recall standing and saying anything.

(Testimony of Alvin R. Kincaid.)

Q. You could have if you wished, could you not, Doctor?

A. I was a member; I think I had the right to stand up and ask for the floor.

Mr. Kimball: I think that is all.

The Court: Any other questions?

Mr. Rosling: No questions.

Mr. Sembower: That is all.

Mr. McNichols: May this witness be excused?

The Court: I assume he may be excused then from further attendance.

The Witness: Thank you.

Mr. Sembower: I wanted to ask one other question, I'm sorry.

### Redirect Examination

By Mr. Sembower:

Q. Dr. Kincaid, did you appear here pursuant to a subpoena?

The Court: To what?

Mr. Sembower: To subpoena.

A. Yes, I was subpoenaed.

Mr. Sembower: Thank you. [2136]

Mr. Rosling: I think that is immaterial, your Honor, because the subpoena had no force. This doctor is a resident of the state of Oregon.

Mr. Sembower: I merely want to point out that a subpoena was served.

Mr. Rosling: He necessarily would be here voluntarily. [2137]

## JOHN C. LYMAN

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

## Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. John C. Lyman.

Q. And what is your address, Dr. Lyman?

A. My office is the Baker Building, Walla Walla.

Q. And what is your residence address?

A. Clinton Court, 82.

Q. You are a medical doctor?

A. Well, my business is surgery. That is a general term, yes, medical.

Q. That is your specialization, surgery?

A. Yes, sir.

Q. How long have you practiced in Walla Walla, Dr. Lyman?      A. Since the first World War.

Q. That would be about 1918?

A. No, about '20.

Q. And have you been during that time a member of the local society, as now constituted or its predecessor group?

A. I was taken in soon after I came, whatever the regulations [2138] were.

Q. What official positions, Dr. Lyman, have you held in the local society since 1949?

A. I don't believe that I have held any since

(Testimony of John C. Lyman.)

'49. I wouldn't swear to that, though I don't believe I have.

Q. Did you not have a connection with the grievance committee?

A. I was asked by the president to sit in on that as a senior member of the society.

Q. Did you consider yourself a member of that committee?      A. No, sir.

Q. You considered that you were not a member of that committee?      A. That's right.

Q. Did you have any official positions during that period, Dr. Lyman, with the American Medical Association?      A. No, sir.

Q. With the Washington State Medical Association?

A. I was on the state board of trustees in the late 40's.

Q. Are you now a member of the local medical service bureau?      A. Yes, sir.

Q. And how long have you been a member of the bureau?

A. Well, I don't know. I was a member soon after it was organized and I think that I was out of it at one time [2139] for a short time, but I couldn't swear to that, either.

Q. Could you estimate, Dr. Lyman, as to approximately the amount of your income that is attributable to bureau matters?

A. No, it would be purely a guess because it is very hard to figure out when there is a group in-

(Testimony of John C. Lyman.)

volved that way. But it is not any very large per cent, it is a small per cent.

Q. Would it be as large as ten per cent, say?

A. Oh, it might. I rather doubt it, but it might.

Q. Do you recall Dr. Page discussing the local grievance committee with you, Dr. Lyman?

Mr. Rosling: At what time?

Mr. Sembower: In 1950 or at the very inception of the grievance committee.

A. I remember that he came and asked me to sit in on it.

Q. Do you remember where that conversation took place? A. No, I do not.

Q. Do you remember whether anyone else was present but you and Dr. Page?

A. No, I do not.

Q. What did he say to you and you say to him on that occasion?

A. Well, he simply said he wanted some one of the older men to sit in on it to be sure they didn't get out of line [2140] or do something that wasn't right, to be sure we had good moral backing.

Q. Did he ask you to be chairman of the committee?

A. He had previously, but I told him I had resigned from every office in the medical, state, everywhere else, I was not going to serve in any more offices, let the younger men have a chance.

Q. And then subsequently he asked if you would serve as advisor? A. That's right.



(Testimony of John C. Lyman.)

Q. Did he specify what his concern was that the committee should have a balance wheel?

A. No, just that he wanted that as a safety measure to be sure that we didn't do anything out of line.

Q. And did you consent then to serve in that capacity?      A. Yes, sir.

Q. Did he state to you at that time who he was going to appoint as chairman of the committee?

A. I don't believe he did.

Q. And did he state any of the other members he planned to appoint?

A. I don't remember. I couldn't say that.

Q. When did you first learn, if you did, who were the members of that committee?

A. Why, I think when I promised him I would be the advisor. [2141]

Q. And that would be about when, if you recall?

A. I don't know. You have the records, I haven't. I refuse to try to remember any dates five or six years back.

Q. Well, the grievance committee was probably activated around September some time. Would that refresh your recollection at all?

Mr. Kimball: I don't think I would agree with that statement, Counsel.

Q. (By Mr. Sembower): I believe, Dr. Lyman, that one could probably say the committee came into being in April. That was when a motion was passed. Would it have been around about that time then

(Testimony of John C. Lyman.)

that he revealed to you the members of the committee?

A. I don't remember when it was appointed at all.

Q. Did he discuss with you the qualifications of the persons he proposed to appoint to the committee?      A. No.

Q. Did you make any suggestions to him, Dr. Lyman?

A. No; not to the best of my memory.

Q. Dr. Lyman, were you ever consulted in your capacity as an advisor to the grievance committee?

A. Well, things were talked over with me, if you call that consultation, yes.

Q. When was the first time, say, that you were consulted [2142] about the activities of the grievance committee?

A. Well, shortly after the hearing, the first hearing.

Q. What first hearing do you have in mind?

A. In regard to the present case we are sitting in on.

Q. Would you say that you were consulted after the October—well, I will strike that question and ask you, Dr. Lyman, if you remember attending the meeting of the society on September 26th in 1950?

A. I wouldn't know. That date wouldn't mean anything to me.

Q. Do you remember attending a meeting on or about that time when Dr. Robinson spoke critically of the grievance committee and referred to a letter

(Testimony of John C. Lyman.)

and referred to Dr. Stevens' conversation with him with respect——

A. I have a faint remembrance of such a thing happening but haven't any idea what the date was.

Q. Were you consulted at or about that time relative to the activities of the grievance committee?

A. I don't remember.

Q. Were you ever consulted, Dr. Lyman, about a letter being sent to a Mrs. Noel Edwards relative to a dollar and a half bill she was protesting?

A. No, sir.

Q. Never had any consultation at all on that?

A. No, sir. [2143]

Q. When did you first learn about that letter?

A. I don't remember.

Q. Do you remember attending a meeting held on October the 10th, 1950?

Mr. Kimball: What date, counsel?

Mr. Sembower: October 11th, 1950, at which a statement was taken from a man named Tom Brooks, Doctor?

A. I think that was the date. I wouldn't know as to the date, but I was there.

Q. Do you recall who got in touch with you and asked you to come to that meeting?

A. No, I don't.

Q. Did the person who got in touch with you and asked you to come to the meeting explain the business of the meeting?

A. I don't know, but they said it was important

(Testimony of John C. Lyman.)

enough that they would like to have me sit in on it. That is all I remember.

Q. And did they specify in any way why they thought it was important enough?

A. Well, they said that in case the point was made, it was a question of blackmail by an individual of our society and they thought I ought to be there.

Q. And that was sufficient for you to decide to attend that meeting? [2144]

A. Well, they asked me to.

Q. Do you know Tom Brooks, Dr. Lyman?

A. Only just meeting him, that's all.

Q. On what occasions have you met him?

A. Oh, I don't know. Certainly not more than two or three times, I would say.

Q. Do you remember in what connection?

A. I had never seen him before that meeting.

Q. But you have seen him since that meeting?

A. Uh-huh.

Q. In what connections have you seen him?

A. Just in passing, that's all.

Q. Beg your pardon?

A. Just in passing, that's all. I have never talked to him.

Q. Did they relate to matters of the society?

A. No, sir.

Q. Were they private business matters of some sort? A. No, just said howdy do.

Q. I think that Mr. Brooks testified that he had met you twice on business, Dr. Lyman. Do you have recollection of that?

(Testimony of John C. Lyman.)

A. I have no remembrance of that. I have even forgotten what his business is.

Q. Would it refresh your recollection at all if I mentioned that part of his business is making investigations for [2145] insurance companies?

A. No, but I see so many of those that I wouldn't remember any specific one, but that is probably very possible.

Q. Dr. Lyman, do you recall reading a letter written by Dr. Robinson dated August the 11th, 1950, relative to the medical service bureau and criticizing it?

A. I remember that I got one.

Q. Did you read it at the time?

A. I think I did read the first one.

Q. What was your reaction to that letter then?

A. Well, I didn't have much reaction, being that anyone that didn't want to serve in the bureau, it didn't make any difference to the rest of us. As I say, I held out of it, I remember, once myself. It was a matter of free choice whether you wanted to or not.

Q. What did you think of the validity or invalidity of the criticisms which Dr. Robinson voiced in the letter?

A. Well, they didn't get any serious consideration from me. I didn't think they were valuable at all.

Q. Did you discuss the letter with any other doctors?

A. Probably, but I have no remembrance of it.

(Testimony of John C. Lyman.)

Q. Did you discuss the letter with Dr. Balcom Moore, Dr. Lyman?

A. Not to my memory. It is too far back, I don't remember now. [2146]

Q. Did you ever see a copy of the letter or the letter itself that Dr. Moore wrote to Dr. Robinson criticizing, that is, answering Dr. Robinson's letter?

A. I don't think so.

Q. Dr. Lyman, at the time of the October 11th meeting, 1950, before which Tom Brooks appeared and gave a statement, how well did you know Dr. Robinson?

A. Well, I had had several contacts with him professionally.

Q. Had you had any contacts with him socially?

A. I don't know. I remember that he was at our house to dinner, but it seems to me that was after that affair, he and his wife, but I couldn't give you the date on that.

Q. Did you know very much about his background, family antecedents, of any nature?

A. Well, we learned quite a little that night, particularly our wives, I think. They had some things in common.

Q. You are referring to the night when you had dinner?           A. How's that?

Q. You are referring to the night when you had dinner together?           A. Yes.

Q. Had your professional associations with Dr. Robinson been very extensive?

A. No, but I had seen several cases with him.

(Testimony of John C. Lyman.)

Q. Were you familiar with Dr. Robinson through the activities [2147] of the society and the bureau?  
A. Well, not too well, fairly well.

Q. Did you form any opinions relative to the nature of his participation in the society's activities?  
A. In the bureau?

Q. Well, in the bureau first, yes?

A. Well, about the bureau, I didn't see any sense of raising any fuss about it, because if he wanted out of it, all he had to do was say so; if you wanted to get back in, all you had to do was apply.

Q. Now, what about the society, did you form any opinions about the nature of his participation in society matters as you observed them?

A. Not particularly.

Q. Dr. Lyman, you attended the meeting of the trustees, I believe, on November the 9th at the Grand Hotel, 1950. Do you recall that meeting?

A. No, I do not. I think it was a meeting after the medical society and I don't think I stayed through it, but I think I was there for a few minutes. But I wasn't there officially at all, anybody could attend that wanted to.

Q. The trustees present, according to the minutes, Dr. Lyman, were Doctors, Page, Tompkins, Keyes and Ralston, and the others present given in the minutes are yourself, [2148] Dr. Johannesson, Dr. Stevens, Judd Kimball, and Mr. Fullerton.

Did you know at that time who Judd Kimball was?

(Testimony of John C. Lyman.)

A. Yes, I have known him ever since he came to Walla Walla.

Q. Did his presence at the meeting on November the 9th, 1950, strike you as unusual or novel in any way?

A. No, not in the light of what they were dealing with. It was one of my recommendations, why, they have a lawyer that they did things according to Hoyle.

Q. Well, do you remember, Dr. Lyman, the nature of the business transacted at the meeting on the 9th?

A. No, I wouldn't remember any of the details, I don't believe. It is too long ago.

Q. Would it refresh your recollection for me to read from the minutes (reading):

“On Motion made by Dr. Tompkins and seconded by Dr. Ralston, it was carried unanimously that an official hearing be held by the board of trustees of the society on the complaint of Mr. Brooks; that Dr. Robinson be served with a copy of the complaint, notified the hearing is to be held, and requested to be present to present his answer, and that the meeting be held in the office of Dr. Ralston, November 21, 1950, at 8:00 p.m.” [2149]

Does that refresh your recollection of the business transacted?

A. I knew that that took place, but whether I stayed through until that happened or whether it was reported to me afterwards, I don't know, but



(Testimony of John C. Lyman.)

I knew it took place. But I couldn't swear as to whether I stayed until that was done or not.

Q. Had you by that night of November the 9th, Dr. Lyman, received a communication or a complaint from Dr. Robinson against the grievance committee?

A. I don't know because I received so many letters that I had a stack about eight inches high and I quit reading them.

Q. Of course, at this time you had not received so many letters, had you?

A. Well, I don't remember when I quit reading them. It is too far back for me to remember.

Q. You did quit reading them at some point?

A. Yes, I did.

Q. Why did you quit reading them?

A. I didn't think they made good sense. It was too much off, irrelative, and so on. I mean, just wandering.

Q. But you don't have any recollection of this letter or complaint that Dr. Robinson prepared, I think under date of November 7th? [2150]

A. Oh, I'm sure I had it, but yet I have no remembrance of any of the detail or anything now.

Q. Dr. Tompkins testified that a copy of that letter was present at that meeting. Do you recall that?      A. No, I do not.

Q. Do you recall any discussion on it?

A. Well, I remember they were discussing the case in general, but as to that, I don't know.

Q. At that meeting on November the 9th, did

(Testimony of John C. Lyman.)

you know whether or not Dr. Robinson had been apprised of the complaint or statement given by Tom Brooks nearly a month ago, nearly a month before that on October the 11th?

A. No, I wouldn't know.

Q. Dr. Lyman, did you attend the meeting called on November the 20th, 1950, upon the petition of Dr. Robinson for a special meeting to consider the grievance committee?

A. I don't know, can't remember.

Q. I find your name among those present in the minutes. Do you recall, Dr. Lyman, such a meeting being held at which the question of continuing the grievance committee was before the house?

A. Yes, I remember that occurred at some meeting, I have forgotten which one. [2151]

Q. And do you remember the vote which occurred there?

A. No, I wouldn't have any remembrance of the vote.

Q. Dr. Lyman, had you given any consideration up to this time to the matter of this committee being started, grievance committee being started, as a so-called secret grievance committee?

A. Well, that was discussed at the time and it was agreed to keep it that way to protect the individual doctors from being phoned to all the time by anybody that had a complaint about their bill or anything, and we thought it reasonable to leave it that way.

(Testimony of John C. Lyman.)

Q. Were you in accord with the proposition that it should be a secret grievance committee?

A. I acceded to it, yes.

Q. Now, Dr. Lyman, by this time of the meeting of November the 20th, wouldn't you say that the grievance committee situation was a pretty snarled up affair?

A. Not to those who knew what was going on, that is, the officers and all I think were all straight on it, and I don't believe there was any question about it with them at all.

Q. Who do you think was pretty straight on it, as you just stated?      A. The officers, I say.

Q. Could you specify the officers that you know who were [2152] appraised of the situation?

A. No, because I can't remember any such details.

Q. Would it include Dr. Tompkins?

A. I would certainly expect it to.

Q. Dr. Stevens?      A. Yes.

Q. Dr. Keyes?

A. I would think so, but I don't know.

Q. Dr. Pratt?      A. I don't know.

Q. Well, now, Dr. Lyman, you stated that it was clear in their minds how it was to function, and so on. What did you mean by that?

A. Well, it is a new project of establishing public relations and it takes some time for a thorough understanding of that to get across to all the members.

(Testimony of John C. Lyman.)

Q. Did you know whether the grievance committee had any set of rules or regulations to guide it?

A. Well, they didn't have until they got started and they didn't get their final orders until later from the state in regard to it.

Q. Do you remember about when that was?

A. No, I do not.

Q. Did you ever consult with Dr. Stevens as to the procedures which he was following? [2153]

A. I don't remember.

Q. Did it ever occur to you that as advisor to the committee, it might be beneficial for you to consult with the committee about this stage?

A. Well, it probably did. I wouldn't have any remembrance of it now after five or six years, I am too old for that.

Q. Do you think you may have consulted with the committee?

A. Very possibly, yes, or with the president of the association, and so on, in regard to it.

Q. Would this difficulty which had arisen, Dr. Lyman, possibly be the sort of thing that Dr. Page had in mind in asking you to serve as a so-called balance wheel?

A. No, it was in regard to any serious decisions, I think.

Q. Would it have made any difference to you through this period in your consideration of the matter if you had known that the first contact on the so-called Edwards-Brooks matter between Dr. Stevens and Dr. Robinson had been Dr. Stevens ac-

(Testimony of John C. Lyman.)

costing him on the street, raising the question with him. Would that have made any difference to you if you had known that?      A. No.

Q. Would it have made any difference to you had you known that no meeting of the committee had been convened, as [2154] such, but there had been only a conversation between Dr. Stevens and Dr. Yengling?

A. No, because they certainly would delegate one of them to notify him, probably, or contact him to see if there was really anything up.

Q. Did you make any personal investigation yourself, Dr. Lyman, concerning the matters of the Edwards, so-called Edwards complaint, about the dollar and a half, and the so-called Brooks complaint?

A. Well, I sat in on and heard the hearings, and so on, and I kept versed in whatever action was taken at the time and sanctioned it, yes.

Q. Well, now, at the first hearing where Tom Brooks gave his statement, Tom Brooks was the only one who testified, was that not correct?

A. I am not sure. I remember him, all right.

Q. At that point, it was essentially a question of just Tom Brooks' word against Dr. Robinson's, was it not?

A. Except that we were informed that there was a second party listening in.

Q. And who informed you of that?

A. I suppose Tom Brooks, but I——

Q. Do you recall who he said was listening in?

(Testimony of John C. Lyman.)

A. Some member of the family.

Q. Do you recall the manner in which he said that he was [2155] listening in?

A. I think it was that they had two phones, two extension phones, as I remember.

Q. Did any of the officers or trustees of the society—well, I will put it this way: I suppose then the officers and trustees of the society kept you apprised, did they not, Dr. Lyman?

A. Well, if they didn't, I kept myself.

Q. Well, now, what steps did you take to keep yourself apprised, Dr. Lyman?

A. Well, had a meeting or anything, why, I went to find out what happened.

Q. Dr. Lyman, did you attend the meeting held on November the 21st at which a hearing was held on the Brooks complaint?

A. Is that the same meeting you just asked me about in November?

Q. No, I asked you about on the 20th, which was held the day before.

A. I don't know. Where was this held?

Q. This was held in Dr. Ralston's office.

A. I don't believe I was there.

The Court: That was a trustees' meeting, wasn't it?

Mr. Sembower: That was a trustees' meeting, November the 21st. [2156]

A. I knew about it, but I don't remember that I was there.

Q. Dr. Lyman, do you recall receiving a letter,

(Testimony of John C. Lyman.)

not personally to you, but to officers of the society and other members of the society, from Dr. Robinson dated December the 22nd, 1950, in which he discussed the handling of the Brooks complaint and he contended that an unauthorized reference had been made to the state grievance committee?

A. I think I must have had that.

Q. Dr. Lyman, at this time had you read the constitution and bylaws of the local society with reference to the handling of grievance procedures?

A. I had previously, yes.

Q. Did you read it and consider it in the light of this particular controversy, or was it just a general familiarity you had with it?

A. My general familiarity, yes, sir.

Q. Did you read the constitution and bylaws of the Washington State Medical Association with reference to the grievance procedure?

A. No, I happened to be on the board when that was passed and put into effect and I voted for it, so I was familiar with it.

Q. Dr. Lyman, I don't find your name among those present at the meeting of the trustees held to investigate the [2157] complaint of Mr. Thomas R. Brooks on November the 21st. Was that because you were not a trustee that you were not present or was there any other reason?

A. I was just a member of the society. It was my privilege to go if I wanted to.

Q. Well, did you decide specifically not to go to this meeting, then?

(Testimony of John C. Lyman.)

A. I don't remember, I might have been busy. I knew I would get a report of it afterward.

Q. From whom did you think you would get a report?

A. From the secretary or president or members of it, nothing hidden or secret about that.

Q. Dr. Lyman, were you familiar with the provision in the bylaws of the local society referring to disciplining of members, Chapter III, providing for:

“If the accused person is a member of this society, the Board shall investigate concerning the matter alleged and shall use kindly efforts in the interest of peace, conciliation, or reformation, as far as possible and expedient.”

Were you familiar with that provision?

A. Yes, sir.

Q. Did you consider that in connection with this matter?      A. Yes, sir.

Mr. Kimball: If the Court please, this witness said [2158] he was not a member of the trustees. I can't see the point of questioning him, regarding this.

Mr. Sembower: Well, your Honor, I am not asking him as a trustee. These are the bylaws and constitution of the whole society and I am merely asking him if he is aware of this provision.

The Court: Just as a member of the society.

Mr. Sembower: As a member of the society.

The Court: Oh, all right.

Q. (By Mr. Sembower): Dr. Lyman, do you know whether efforts were exerted by the board of



(Testimony of John C. Lyman.)

trustees to use kindly efforts at conciliation or reformation?

A. Very definitely so, as well as the grievance committee members.

Q. Well, now, what efforts were those?

A. Personal efforts, I mean went and talked to him.

Q. Did you make any personal efforts yourself?

A. No. I had no official capacity.

The Court: You are asking him if he made effort as a member of the society?

Mr. Sembower: Yes.

The Court: Well, it wasn't his duty as a member of the society to make any effort under that bylaw.

Mr. Sembower: No, not under the bylaw, but I merely was interested to see whether he himself did make any efforts. [2159]

The Court: Just as a volunteer?

Mr. Sembower: Yes, as a volunteer.

The Court: All right.

A. No, sir.

Q. (By Mr. Sembower): Your answer was no. Did you ever discuss the matter with Dr. Pratt?

A. I think I heard him one morning in surgery make some remarks about it, nothing that I could remember definitely.

Q. Do you recall what those remarks were?

A. Well, he was quite upset because he wanted to get the doctor straightened out, didn't want anything to go wrong with him.

(Testimony of John C. Lyman.)

Q. Do you remember when that conversation took place?

A. No, I couldn't give the date on that.

Q. Dr. Lyman, did you attend the meeting on May 22nd, 1951, at which Dr. Robinson's expulsion was an order of business?

A. Yes, sir, I believe I did.

Q. Did you vote on that occasion?

A. Yes, sir.

Q. Did you vote for expulsion or against it?

A. I did.

Q. Did you after that meeting, Dr. Lyman, attend the meeting held in the Marcus Whitman Hotel, or anywhere else, [2160] at which Dr. Robinson's mental condition was the subject of discussion?

A. I don't remember of any such. Certainly couldn't have been anything official or I would have been notified. I don't remember any such thing.

Q. Would it refresh your recollection at all that a discussion may have taken place at that time for Dr. Pratt to write a letter to Dr. Robinson's father?

A. No, I wasn't at any such meeting.

Q. Did you ever discuss with Dr. Pratt the proposition that he might get in touch with Dr. Robinson's father?

A. I don't believe so. I heard something about it some way or another, but I don't think that it was through him.

Q. Did you hear any other doctors discussing Dr. Robinson's mental health on any other occasion?

(Testimony of John C. Lyman.)

A. Yes, I can't remember any specific instances, but then it was mentioned now and then.

Q. Did you ever hear Dr. Tompkins speak of it?

A. I don't remember.

Q. Did you ever hear Dr. Tompkins state that he was fearful of violence from Dr. Robinson?

A. I don't believe I ever did.

The Court: Court will recess for ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Lyman, you do recall that the [2161] Judicial Council of the American Medical Association reversed the local society and the Washington State Medical Association?

A. Yes, that was simply, purely a technical matter, had nothing to do with guilt.

Q. Did you see the telegram which was dated February 1st addressed to the local society from Dr. Edward Cunniffe in Chicago?

A. No, I did not.

Q. Did you participate in any discussions with the officers or trustees of the local society relative to the recognition or lack of recognition of that telegram as a matter of restoring Dr. Robinson to society membership?

A. Well, I remember that there was some talk about it because we did it.

Q. You did restore him, you say, to membership?

A. Yes.

Q. Do you recall when that was?

A. No, I wouldn't have any idea now. I know it

(Testimony of John C. Lyman.)

was delayed a long time before we got the official thing.

Q. Beg your pardon?

A. I can remember that it was delayed because of waiting for the official thing after this wire.

Q. Did you consult with any of the officers or trustees [2162] relative to the authenticity of the wire or the opinion which was received?

A. Well, I remember talking it over and we decided we couldn't take any action until we got the official thing in writing.

Q. I show you, Dr. Lyman, Plaintiff's Exhibit 206, which is a letter from Dr. Morton W. Tompkins to Dr. E. B. Howard, American Medical Association, and ask you if you have ever seen that letter before?

A. No, I'm sure I haven't.

Q. Dr. Lyman, you stated that the decision of the American Medical Association Judicial Council had nothing to do with the guilt or innocence of Dr. Robinson, is that correct?

A. Yes, sir.

Q. On what do you base that statement?

A. Well, because it was simply a matter of the only thing they criticized was the technical procedure.

Q. And you are basing that on a reading of the opinion of the Judicial Council?

A. Well, and whatever information I got was all to that effect.

Q. What was the source of that information?

A. From the officers that did the corresponding.

(Testimony of John C. Lyman.)

Q. And what officers would those be, if you recall? [2163]

A. Oh, the president or secretary, or both.

Q. Would it be Dr. Tompkins, do you recall?

A. I expect so.

Q. Dr. Keyes?

A. I don't know. Whoever was officially in charge would have been the one that I talked with.

Q. Dr. Howard of the AMA in Chicago in answer to a written interrogatory, Dr. Lyman, stated that it was his recollection that Dr. Tompkins had stated that there was danger that the local society might secede from the AMA over this matter. Do you know of any movement for secession of the local society? A. No, I hadn't heard it.

Q. Beg your pardon?

A. I had not heard of it.

Q. Did you ever hear of it at all?

A. No, never heard of it.

Mr. Sembower: That is all, your Honor.

Mr. Kimball: No cross.

Mr. Rosling: I have just a question or two, your Honor.

### Cross-Examination

By Mr. Rosling:

Q. Dr. Lyman, when you were discussing the formative period of the local society's grievance committee and you were [2164] asked as to whether or not rules and regulations had been adopted, I understood you to say, and I am not sure that I caught it correctly, that you had not received orders from

(Testimony of John C. Lyman.)

the state with reference to rules and regulations. Did you use the word "orders" advisedly?

A. I don't remember, but I mean they don't give us any orders, it would be entirely a recommendation, whatever, because they don't order us to do anything.

Mr. Rosling: No further questions.

A. If I used the word, it was misused. [2165]

\* \* \*

May the record show that the deposition of Dr. Pratt is being presented. Dr. Pratt is a defendant in this action.

#### DEPOSITION OF DR. WALLACE A. PRATT

The deposition states:

That before testifying, the said Wallace A. Pratt was duly sworn by the said Florence Green in all respects as required by law, and the following proceedings were then and there had, to wit: [2166]

Q. Will you state your full name, please?

A. Wallace A. Pratt.

Q. Where do you live?

A. In Portland, Oregon.

Q. Your address there?

A. 2705 S. E. River Road, Portland 22, Oregon.

Q. How long have you lived in Portland?

A. About since September 1st.

Q. Of this year?           A. Yes.

Q. Where did you live prior to that?

A. In Walla Walla.

(Deposition of Dr. Wallace A. Pratt.)

Q. You are a former member of the Walla Walla Valley Medical Society? A. I was, yes.

Q. Directing your attention to the period of time between December 14, 1950, and May 22, 1951, did you hold any official position in the Walla Walla Valley Medical Society?

A. I understand I was a Trustee for the period of one year; I just don't remember the dates.

Q. Do you think it could have been during that period of time, that would be in 1950-1951?

A. It may have been.

Q. Is that an elective office? [2167]

A. Yes.

Q. By the membership? A. That's right.

Q. Were you a member also of the Walla Walla Valley Medical Bureau? A. Yes, I was.

Q. And what was the Medical Bureau, Dr. Pratt?

A. It was an organization of doctors here to handle welfare work and also prepaid medicine—medical care.

Q. Do you remember when that was formed?

A. No, I couldn't tell you exactly.

Q. Did you by any chance participate in the formation of it? A. Yes, I was there.

Q. Could you approximate the date when it was formed? A. It was previous to 1950.

Q. Would it be possibly 1949?

A. It may have been, yes.

Q. Dr. Pratt, as a Trustee of the Medical So-

(Deposition of Dr. Wallace A. Pratt.)

ciety, were you aware of the existence of a Grievance Committee in the years 1950 to 1951?

A. I was.

Q. Was this a secret Grievance [2168] Committee?

A. Yes, it was, as far as I know. I didn't know who the men were on it, myself, until afterwards.

Q. Did any of the members of the Society know the composition of this Committee?

A. Yes, some of them did.

Q. Who would those be?

A. Well, the men appointed to the Committee would know.

Q. And who appointed the Committee?

A. I think Dr. Sam Page.

Q. And what was his position?

A. I think he was the President of the Society.

Q. Did the Trustees discuss the formation of this Grievance Committee prior to its creation?

A. I think they delegated that selection to Dr. Page; I believe so.

Q. Do you recall how the matter of creation of such a Grievance Committee was raised?

A. How was it determined?

Q. No, how did it come about?

A. I think on the medical scenes there were certain changes occurring in medical economics and the securing of State medicine and so on, [2169] and they thought that they would set up an organization to offer services to the public to counteract the entrance of any more State medicine, that was the



(Deposition of Dr. Wallace A. Pratt.)

object, I believe, and offer these services by local physicians to the community.

Q. How did medical economics figure in the creation of such Committee?

A. Well, you understand if state medicine were to come about it would probably end up with all the men being on salary, you see, under the jurisdiction of the government, state or Federal, and that they did not like very well.

Q. How would a Grievance Committee figure in that situation?

A. Well, the Grievance Committee, as I understood it, was to take care of trivial matters coming up in the community with respect to accounts. There might be some dispute between patients and doctors in the amount charged, and the thought was instead of having it go on to litigation if they could arrest these things by getting the parties together and settling the matter.

Q. Did this idea of such committee [2170] originate locally?      A. I doubt it very much.

Q. Where do you think the suggestion—

A. I think there was some description of a grievance committee in the AMA Journal, and it was generally being promoted, I thought, throughout the country by medical societies and had the endorsement of the AMA.

Q. That was the major reason why the local Medical Society created it?

A. To keep up in the profession and take care of the disputes in that way.

(Deposition of Dr. Wallace A. Pratt.)

Q. How did it happen that it was formed as a secret committee, if you know?

A. For instance, if the public were to know that the Medical Society had three doctors favorable to appeal that everyone would be sending in complaints and it would be a general nuisance to the Society and the Committee. They wanted them to be neutral. They didn't want the public, or even the doctors themselves, to know who was on the Committee, they thought.

Q. Why didn't they want the doctors to know who was on the Committee? A. Why? [2171]

Q. Yes, why didn't they want the doctors to know?

A. Well, I don't know. They just thought it better to have an impartial group to refer these matters to, impartial as regards to the profession generally.

Q. Did the idea it be a secret committee originate locally?

A. I think not. I think it was suggested by Dr. Page. He thought that would be the best way to handle it, and I think it was generally approved but I don't think any vote occurred. I think they just elected Dr. Page to select a committee. I think he was given that option.

Q. You mean the Trustees gave him that option or the membership?

A. The membership, I believe. I may not be right about that.

Q. Dr. Pratt, do you know Dr. Miles H. Robin-

(Deposition of Dr. Wallace A. Pratt.)

son, the plaintiff in this action? A. I do.

Q. When and where did you first meet Dr. Robinson?

A. I met him, I believe, in Walla Walla.

Q. Do you remember about when?

A. It must be way back in the middle forties somewhere. [2172]

Q. Do you remember under what circumstances?

A. It may have been during the war. I am not certain about that.

Q. Do you remember under what circumstances you met him, who introduced him to you or anything of that sort?

A. No, I can't say. I imagine it was Dr. Campbell, but I am not sure about that.

Q. Dr. Robinson was suspended from the Walla Walla Valley Medical Society, was he not?

A. He was.

Q. Do you remember about when that was?

A. I think that was somewhere in 1951, I am not sure.

Q. Do you remember any of the particulars of that suspension? A. Yes.

Q. Was the suspension ever discussed by the members of the Trustees?

A. Well, I don't believe I was on the Board of Trustees, but I imagine it was.

Q. But you were not on the Board at the time it was discussed? A. No.

Q. Dr. Pratt, referring to the transcript of the [2173] hearings which were held before the Washington State Medical Society, I find on page

(Deposition of Dr. Wallace A. Pratt.)

99 this statement by Dr. Yengling—I beg your pardon, page 51—Dr. Yengling said, “Throughout this entire episode every member of the Medical Society has tried personally to cease and desist from saying anything. Finally I went to his close friend, Dr. Wallace Pratt, and he had a long talk with him and he wouldn’t arbitrate, and he tried to get him to settle and he wouldn’t arbitrate in any way whatever.” Dr. Pratt, when did Dr. Yengling talk to you about arbitrating this matter with Dr. Robinson?

A. I imagine it was just about that time previous to the suspension, sometime before that. I cannot give you the date.

Q. Do you remember where the conversation took place?           A. I don’t; no.

Q. You did have a conversation with him about it, however?

A. Well, now, probably did. I do not remember exactly, but I probably did.

Q. Do you remember what he said to you and what [2174] you said to him about it at that time?

A. No, but I may say that I said I would exert my best efforts to quiet the matter and see if I couldn’t see Dr. Robinson and have some adjustment or desist from—

Mr. McNichols: Mr. Kimball interposed here. Does the Court want the colloquy of counsel?

The Court: Beg your pardon?

Mr. McNichols: Does the Court want the discussion between counsel?

(Deposition of Dr. Wallace A. Pratt.)

The Court: I think not unless counsel wishes to have it.

Mr. Kimball: There is very little, I suggest you read it straight through.

Mr. Kimball: You are referring to the conversation Dr. Pratt had with Dr. Robinson?

Mr. Sembower: Dr. Yengling.

Q. You said "to desist from." What did you have in mind to desist from?

A. From opposing the action of the Medical Society through its Grievance Committee. I thought they handled it fairly well. It was my opinion at that time they did their best to settle this original little dispute, as I considered it to be. [2175]

Q. What dispute was that?

A. Over some dollar-and-a-half business; a matter of an account.

Q. Dr. Pratt, were you familiar with the provisions of the Constitution and bylaws with reference to disciplining a member? A. No.

Q. You were not familiar with that?

A. Well, I knew there were such provisions but I hadn't taken steps to read them.

Q. At this time when you talked with Dr. Yengling, were you—you hadn't formed any opinion then whether the procedure spelled out by the Constitution and bylaws for disciplining had been followed or not?

A. No, I didn't. I thought the whole matter was absolutely trivial. I couldn't understand the difficul-

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ties that ensued over a small matter of a dollar-and-a-half.

Q. Were you aware of any other difficulty that was existing between Dr. Robinson and the Society at this time?      A. Yes.

Q. Did you have the same belief about that, it was a trivial matter? [2176]

A. Yes. Yes, I thought the whole approach was a mistake.

Q. You say the "whole approach"?

A. The whole approach on the part of Dr. Robinson was ill-taken, that it was his duty to cooperate with the Medical Society, and instead of that he was opposing them, publicly and in every other way, and I thought he was on the wrong track.

Q. Did you think he shouldn't deny that he was guilty of these charges?

A. Why, I suppose personally he would be disposed to deny such things. Naturally a man would be on the defensive; anyone would.

Q. Did you inquire to determine whether the Executive Secretary had written any letters to outsiders about these matters?      A. No, I didn't.

Q. You were not aware of that at the time?

A. No; no.

Q. Of course, as a matter of fact, it developed that when the disciplinary action was reviewed it was found that the Society hadn't followed its procedures in the Constitution and bylaws; was that not a fact? [2177]

A. Well, I am not sure about that. I heard some-

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thing to that effect. I heard something to that effect.

Q. If you had known at the time you talked with Dr. Yengling that these procedures had not been followed, would that have changed your attitude toward what Dr. Robinson was doing at the time?

A. No, I don't think it would.

Q. You think he should have co-operated even if they weren't followed?

A. Absolutely; absolutely. Doctors are, as a rule, very busy men, and it is my opinion they do not read all this matter that comes through and they are not conversant with the technicalities altogether, you see, and if they were to be reading all the literature that comes out they wouldn't have much time to practice or follow out their duties, because there is a great deal of it.

Q. You wouldn't deny that a disciplinary action is a matter of great consequence to the doctor against whom it is brought?

A. No, I would not.

Q. Wouldn't that justify his deep concern [2178] about it? A. His concern?

Q. Yes. A. Yes, I should say so.

Q. And if he was innocent shouldn't he declare that point? A. Why, yes, of course.

Q. Wasn't Dr. Robinson at this time protesting his innocence? A. Yes, I believe he was.

Q. If procedures are provided for in the Constitution and bylaws they should be followed, should they not? A. I would say so, yes.

Q. And if they are not being followed, wouldn't

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you say that the doctor involved should protest that?      A. I think he had a perfect right to.

Q. Well, now, do you have any views as to why Dr. Yengling asked you to arbitrate this matter?

A. Yes. I think that generally the different men in the profession sensed something different had shown up, something irregular, and had taken such a virulent form they were greatly [2179] disturbed about it and didn't think it would be to the credit of the profession to have one of its members circularize these papers, and they thought the sooner the matter was set at rest, the better for all, including the doctor.

Q. Did Dr. Yengling make any suggestions to you as to what you might say to Dr. Robinson for a basis for settlement?

A. No, he left that with me, as near as I can remember.

Q. You did have then a conversation with Dr. Robinson?      A. Yes.

Q. When and where did you talk with Dr. Robinson about it?

A. Well, I talked with him one time in my office and another time he came to my residence and we talked in the yard about it, in the garden, and we sat there and talked about it and I tried to point out to him the futility, as I understood it, of proceeding with this whole matter.

Q. What did you mean by the "futility"?

A. Why, I thought it was absurdity to go on over [2180] such a small matter and create so much



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disturbance and upset everyone, and he thought he was right and that he would prevail in spite of all circumstances. He thought the whole medical profession needed reforming and that he would go the limit, one opposed to one, from the top to the bottom, he would never quit until he had brought about certain reforms. He thought he had grandiose ability in such a matter, and I sensed right away this was extraordinary, positively something different.

Q. You mean different from——

A. Yes, yes. This chap who purported to be the center of a reform movement or something of that sort, and he would go to the State authorities, and he would go through the AMA itself; there was something rotten in the kingdom and he was out to clear it up.

Q. Well, now, you stated a moment ago, I believe, you weren't aware at this time that the Constitution and bylaws procedures as to disciplinary matters had not been followed?

Mr. Rosling: You were assuming a fact which is not evidence and which we know is not [2181] true. The Constitution and bylaws were followed in this case, Mr. Sembower, and I don't like to have you assume in a question a fact which has not been proven to be true.

Mr. Sembower: That is still the position of the State Society in spite of the decision of the Judicial Council of the AMA?

Mr. Kimball: Why, certainly.

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Mr. Sembower: Do you still take the position you followed it accurately?

Mr. Kimball: Certainly, and I am surprised you express any doubt.

Mr. Sembower: I am surprised, after talking to Dr. Cunniffe, that the State Association still adheres to its opinion.

Mr. Kimball: We thought we were right, and we still do.

Mr. Sembower: Do you recognize the AMA decision as being the final law on that question? That is what I am relying upon. I wouldn't want to presume at all, Mr. Rosling, but I had a ringing in my ears the opinion of the AMA Judicial Council——

Mr. Rosling: The local society abided by [2182] the decision of the AMA and reinstated Dr. Robinson, but if you ask my opinion, the AMA decision was clearly erroneous.

Mr. Kimball: And I agree with that statement.

Mr. Sembower: I will not try to confuse the witness any more than I am confused by this failure to abide by the opinion of the Judicial Council.

Mr. Kimball: We abided by it but we do not think it is correct.

Mr. Sembower: Well, all right. I will pass that point then because obviously we are all confused on that.

Q. (By Mr. Sembower): Now, Dr. Pratt, after you talked with Dr. Robinson, did you then report back to Dr. Yengling?

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A. No, I don't think I did.

Q. Did he ever ask you the results of your efforts to arbitrate the matter?

A. No, I don't think so. I don't recall that he did.

Q. Just let it go at that?                   A. Yes.

Q. Well now, an arbitration presumes a give-and-take procedure? [2183]

A. I don't remember the term "arbitration" being advanced. I was to offer my offices in trying to dissipate this idea Dr. Robinson had, as far as I could, and rest the matter.

Q. Well, I did pick up the word "arbitrate" from Dr. Yengling. He may not have used that when he was talking to you?

A. No. No, there was to be no arbitration, as I recall.

Q. But you felt the whole matter was absurd?

A. Yes, positively so.

Q. You felt it was absurd on the part of Dr. Robinson?

A. Yes, I thought his whole assumption throughout was a mistake, utterly mistaken. He seemed to be possessed. There seemed to be some frustration that triggered him off—"this is all wrong, I am right and I am going to show them that I am right, see, and I will leave no stone unturned in order to do so."

Q. Did you feel it was absurd on the part of the Society?

A. No, I couldn't see how they could function

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and have a man saying the things that Dr. Robinson was saying publicly and in writing, [2184] how the Society could carry on its work. It couldn't prevail.

Q. You thought it was absurd for Dr. Robinson to object to a grievance over a dollar and fifty cents, but you didn't feel it was absurd for the Society to raise the grievance, or did you think the whole thing was absurd?

A. The society didn't raise this particular grievance. This was raised by the parties who received the account of \$1.50. The dispute was brought to the Grievance Committee of the Society, as I understand it.

Q. Were you aware that the Executive Secretary of the Society wrote the grievant and said they were recommending that that bill not be paid?

A. I didn't know at the time until afterwards it came out that he did so.

Q. Would that have changed your attitude?

A. Not a bit. The whole matter to me was just simply unheard of. I couldn't believe it could take such form.

Q. Dr. Pratt, did any medical society ever write a client of yours and tell them not to pay their bill, in your whole experience? [2185]

A. No, I don't recall that they did.

Q. Do you feel it would be a proper procedure for a society to do that without having a hearing?

Mr. Kimball: May I interject this remark? You say "tell a patient not to pay his bill." I object to

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that if you are referring to the letter of September 30th. It does not say that.

Mr. Sembower: What does the letter say?

Mr. Kimball: It is in evidence. Maybe you had better read it.

Q. (By Mr. Sembower): Looking at the letter, Plaintiff's Exhibit 248, the letter states, Dr. Pratt, in the last paragraph—it starts out: "Dear Mr. Edwards: Your complaint against Dr. Robinson has been investigated by the Grievance Committee——"

Mr. Rosling (Interrupting): Not Fullerton's report, their report.

Mr. Sembower: That's right.

Q. (Continuing): "In this case, however, since there was a misunderstanding regarding the prescription, the Grievance Committee feels that the best interests of all concerned should [2186] be to drop the matter leaving the bill of \$1.50 unpaid, especially since the little patient seems none the worse for her experience." Wouldn't you infer that that was, to say the least, a suggestion to the patient not to pay the bill of \$1.50?

A. I believe so. It isn't a directive and it isn't compulsory; it is merely a suggestion to quiet this matter, and I thought it was not out of the way. They wanted to help, you see. The Committee were acting in good faith. They were not conspiring against Dr. Robinson or anything. That is what I say, the whole approach——

Q. Do you say that of your own knowledge?

A. Yes.

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Q. On what do you base the statement?

A. Because I know all the men on that Committee and I know these men were acting in the best of faith and that they were not disposed in any way to injure Dr. Robinson. That wasn't the idea.

Q. Did you talk to them about it?

A. No, I think not.

Q. That is, you just base that on your [2187] assumption, is that correct?

A. Yes, I read the letter afterwards. When it began to create so much comment I read the letter and I thought, "Well, now, that isn't bad." If I had a patient and was having trouble with the patient over \$1.50, or \$150.00, and to get it out of my hair I would thank the Committee for sending such a letter to get it out of the way.

Q. And your opinion wouldn't be changed if there was a hearing held about the matter, at which time you were questioned as to whether this bill was justified?

A. It was such a small amount to precipitate all this business, it was simply ridiculous—simply ridiculous, and the Committee are busy men, they are acting in good faith, they didn't want to hurt Dr. Robinson or these people either. I would thank the Committee if they sent such a letter to me, and that is the difference in one man's method of thinking and another one's.

Q. Now, of course, your statement these men were acting in good faith is based on your surmise, is that correct? [2188]

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A. Well, of course, my judgment in the matter.

Q. Not based on any direct conversation you had?

A. No, that's right.

Q. Now, Dr. Pratt, a moment ago you were saying that Dr. Robinson was disposed to carry this thing to the highest authority and all that. Did you feel he was unreasonable about that?

A. Very; positively unreasonable.

Q. Did you form any opinion? A. I did.

Q. What was your opinion?

A. I thought the man was possessed with a fixation of persecution and was uncontrollable, not amenable to reasoning whatever. I got nowhere with him. He had this big, big idea he could reform the whole profession.

Q. You thought he had delusions of grandeur?

A. I did—yes and no. Delusions of grandeur—I will say it is in a sense a delusion when a man is utterly mistaken in his premise and proceeds to feel he is elected to do a—make a reform or revolution in the handling of medical problems.

Q. Did you feel he was verging on insanity?

A. No, I didn't feel that at the time. I [2189] was thinking about him, but I think he is a very clever man in other matters, but he was so systematic and persistent, I thought that man is gripped by some ideas that he was utterly incapable of disposing of.

Q. In other words, you thought he was crazy on that point?

A. On that point, yes, off the beam. On that

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point, but on other matters very nice, charming man at times and quite reasonable, and I thought a lot of their family. I knew them, not too well, but fairly well.

Q. Well, Dr. Pratt, would a person who would try to reform a procedure in the Medical Society be, in your estimation, demented for attempting that?

A. No.

Q. What do you think would justify an attempt to reform the procedure of a medical society on the part of a member of it?

A. I am all for reform when I consider it necessary. I am very pleased to say that I would admire anyone that would try to correct the fault anywhere that was quite obvious—a fault. That is all right; that is all right. [2190]

Q. Dr. Pratt, as a matter of fact, you did write a letter to Dr. Robinson's father, didn't you?

A. I did.

Q. When did you write that letter, do you recall?

A. Oh, it was shortly after the dismissal from the Medical Society, I believe. I do not remember just when, but it was shortly after that.

Q. How did you come to write that letter?

A. Well, I had met Dr. Robinson's father and stepmother and, of course, his family, and I felt sympathetic toward them, and I thought, "Here this man has a son who I think is——"

Q. Abnormal, is taking steps that are abnormal?

A. And irregular and may lead to a great deal of trouble, and for my absolute sympathy for his wife,



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his children and his father, I thought I would write and tell him some of the circumstances ensuing toward this decision and ask him if he couldn't come out or do something to straighten Miles out.

Q. Dr. Pratt, as a matter of fact, you wrote this letter on May 24, 1951, did you not?

A. I wouldn't say. It may have been then.

Q. I have a photostatic copy of the letter [2191] here.

Do you recognize the letter?

Mr. Kimball: It isn't a complete copy. Is there an explanation for the part cut out?

Mr. Sembower: Some of Dr. Robinson's memoranda were on there, but the letter itself is intact.

Mr. Tuttle: If there is another piece of the letter here, why don't you put the whole letter together?

Mr. Sembower: There is a note.

Mr. Rosling: Will you read it, Mr. Sembower, and express your opinion?

Mr. Sembower: There are three names to whom copies were sent and his own file number, one word I can't read but not part of the letter itself.

Mr. Kimball: Do you mean copies of that letter were sent by Dr. Pratt?

Dr. Robinson: No, copies were sent to various members of my family.

Mr. Kimball: By whom?

Dr. Robinson: By my father, I presume.

A. I think that the letter is the letter I wrote, a copy of it. Yes, I would say so. You can see in there

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that I was acting as a friend in [2192] every way and for Miles and to the family; I felt very, very badly about it.

Q. (By Mr. Sembower): This was, as a matter of fact, written just two days after his suspension?

A. It may have been. I don't remember the date of the suspension. However, I would say that impressed my feelings very much.

Q. Well now, when had you met Dr. Robinson's father?

A. Oh, I imagine a year or two before that.

Q. About a year before that?

A. Oh, maybe two years, but previously.

Q. On what occasion did you meet him?

A. I think we met at our home, and out at Miles' home out on the farm out here.

Q. On those two occasions how long did you visit with Dr. Robinson's father?

A. Not very long. We had casual conversations of a pleasant nature.

Q. What other members of the family had you met?

A. Well, I met Dr. Lewis Robinson's wife, and there were some other friends, I do not remember their names. I think they were friends of Mrs. Miles Robinson, or possibly [2193] relatives.

Q. Did you consider them close personal acquaintances? A. No, not that way.

Q. Did you exchange Christmas cards with them, for instance?

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A. Well, I hardly think so. We may; I hardly think so.

Q. What did you have in mind that your letter would accomplish, Dr. Pratt?

A. Why, I just thought that I was unable to influence Dr. Robinson in any way, that I thought his father might do so, you see. Knowing Miles all his life, that he might do so.

Q. This letter was written two days after his expulsion. The matter had been pending for some time prior to that?      A. What matter?

Q. The matter of the disciplinary action was pending for some time prior to his expulsion?

A. Oh, I think so; probably was.

Q. Did you get in touch with Dr. Robinson's father at any time during the pendency of the matter? [2194]      A. Never; no.

Q. Wasn't it a little late to write his father after he had been expelled?

A. Well, I didn't think—I didn't know it would come to that—expulsion. I didn't sense that. I thought he would be disciplined in some way but I didn't—If it had been late, I wish I had written it sooner now after the turn the matter has taken. Maybe I should have written the father six months before or a long time before.

Q. You stated a moment ago you didn't know expulsion was imminent?

A. No, I thought there would be——

Q. You were a Trustee, were you not?

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A. Not at this time; I don't think I was. I may have been, but I don't think I was.

Q. At any rate, you were a member?

A. I was a member of the Medical Society.

Q. Had you received any notice of the impending expulsion?

A. No, no. I think that was—no, we have a lot of meetings and I didn't know when that was coming up, exactly.

Q. Isn't it a fact, Dr. Pratt, that you had [2195] a conversation with Dr. Robinson right after the expulsion?      A. I did.

Q. Just to refresh your recollection, Dr. Pratt, I am looking at a copy of the minutes of the meeting of the Board of Trustees of the Walla Walla Valley Medical Society held down at the Marcus Whitman Hotel, May 15, 1951.      A. Yes.

Q. And I count among the members present your name, so you must have been a Trustee at that time?      A. I was a Trustee?

Q. Yes; members present in meeting of the Board of Trustees.      A. That was in 1951?

Q. Yes. That was just seven days before the expulsion.      A. Yes.

Q. But you had no notice of the expulsion?

A. Not that I recall. I don't recall that I did.

Q. When you talked to Dr. Robinson, didn't Dr. Robinson in his conversation with you after the expulsion indicate that he was going to file [2196] suit?      A. No.

Q. In the courts?

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A. No. I will tell you what he did say. It was dark, we were on our way out to the car and I said, "Miles, this seems to be it." "I have just begun to fight," he said. I remember the words, "I have just begun to fight." And then we got in our cars.

Q. Did that conversation impel you to write this letter?

A. Probably had some bearing on it, yes. I could sense then he was committed to everlasting fight.

Q. And you didn't want him to carry on an everlasting fight?

A. No, no. I thought, "How foolish."

Q. What could he do now? What could he have done at that point under the Society's rules?

A. Why, he could have—if he had retracted some of the remarks he had made and the statements he had made in these numerous letters and offered to co-operate in the affairs and business of the Society, they would have remanded any such action, I am quite sure.

Q. Why would they have done that? [2197]

A. Because they didn't want to hurt anyone, that wasn't their particular purpose, but to carry on the functions of the Society they could not tolerate this continual fighting and these remarks, and every doctor was receiving great long letters that were published over a good part of the State, and all the local profession got these letters until I had a pile nearly an inch and a half high.

Q. That wasn't the reason for his expulsion, was it?

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A. I think probably—I don't know.

Q. You think that was the real reason for his expulsion?

A. No, I am not saying it was the real reason. No, the reasons are probably given in the decision.

Q. But you think if he hadn't written these letters that might have been overlooked?

A. No, his conduct other than that was sufficient to convince the members of the Medical Society that they could not tolerate someone upsetting the Board in the Society, wrecking the Society, making disparaging remarks about the Society and the Committee and the officers, a [2198] continual——

Q. Against the Bureau?

A. Oh, yes, he said—inferred that Fullerton, the secretary, was in collusion with someone in Seattle and they were ganging up against him, and he was assuming all this, in my opinion. It was a perfect—well, it was all a mistake. He was possessed, as I have said before, with the wrong approach to the whole thing.

Q. You think, in other words, if he had just apologized about these particular incidents there would have been no trouble?

A. Why, of course. All these people have troubles of their own. They buy homes on time, they have families, they can't stand to be worried about such matter and threats as Dr. Robinson was advancing. They have troubles——

Q. You mean the doctors have troubles?

A. Yes, the doctors have troubles of their own,

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and we can't have a Society and have a man kicking over the traces in a manner he was doing. It was utterly absurd.

Q. In other words, they didn't feel Dr. Robinson [2199] was a menace to society because of the \$1.50 bill he charged?

A. No, but his attitude was a menace to the Society, decidedly.

Q. How do you mean, a menace?

A. A menace because he was writing letters, derogatory letters throughout the State. We had a whole stack of them, and highly critical of their actions and how they do things. He was out to reform. He was out to change the whole——

Q. And they didn't want a reform?

A. ——the whole foundation. Oh, I wouldn't say. As you know, they are not disposed to be static, the medical profession.

Q. Many of these letters related to the Medical Bureau?      A. Yes, I presume so. Yes, they did.

Q. Did the doctors resent that?

A. Yes, of course, they did. That is their Bureau and many entered the Bureau, or if they ever did it was their obligation to co-operate with it and make it a success. But not him; oh, no he was out to wreck it. He said, "They are all wet." [2200]

Q. He resigned, as a matter of fact?

A. Yes.

Q. And they resented that?

A. They wouldn't—you understand there is a certain, you might say, accumulated earnings are

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divided among the men and the fewer doctors, the more there would be for the individuals left, so there would be no objective in making the doctors disappointed over his going out, because we have had other doctors that didn't belong, a few here, but most of them—I should say 90 or 95 per cent belong.

Q. Well, what did you hope, Dr. Pratt, that your letter to Dr. Robinson's father would accomplish?

A. I was hoping he would come out and quiet Miles down. I thought he was up in the air and off the beam on this, and I thought probably the father could do more than anyone else.

Q. You were the logical member of the Society to write the father?           A. Yes, I think so.

Q. Did you think any other members of the Society were going to write him? [2201]

A. Oh, no. I don't think they ever knew his father or where he lived.

Q. Did Dr. Yengling mention to you that you might write Dr. Robinson's father?

A. Not that I recall.

Q. He may have?           A. He may have.

Q. Did any other doctors suggest you might write his father?

A. They may have. I think I maybe said that I—in order to help out, that I would write his father and see if something couldn't be done.

Q. When did you say that?

A. Oh, sometime about that same time.

Q. You mean to a group of doctors?

A. No, not a group; just any individual.



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Q. You talked about it?

A. Not very much.

Q. Who talked?           A. I do not recall.

Q. Might have been the other members of the Board of Trustees? Dr. Carlson maybe?

A. It may have been.

Q. Maybe Dr. Tompkins? [2202]

A. I think not.

Q. Dr. Page?           A. It may have been.

Q. Mr. Fullerton may have discussed it with you?           A. No, I think not.

Q. In the old State suit, Dr. Pratt, a deposition was taken of Dr. Carlson and he made the statement in response to Dr. Robinson's question, "This discussion over my father, was it held in a meeting, formal or informal, of officers, including yourself?" and Dr. Carlson said, "Yes, I would say that." Then he was asked, "Do you recall what meeting it was held in?" and he says, "Well, it seems to me it was in a meeting of Board of Trustees in the Marcus Whitman Hotel. I don't recall when." I suppose you might have mentioned in the Board of Trustees you were going to write to his father?

A. I may have. I don't recollect.

Q. And they suggested to you that you write?

A. They may have. I would say that regardless of the Board of Trustees, I felt so alarmed at his conduct that I probably would have written on my behalf because I thought of the [2203] family and their welfare and also the welfare of his own family and himself, because I was very much perturbed.

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Q. Why were you so perturbed?

A. His action was irregular, abnormal, and I was alarmed.

Q. Had he ruined himself as a professional man?

A. Yes, any man that would take it in hand to right a whole profession and was going to reform it from here to elsewhere, even to the headquarters of the AMA, I thought, "This man has big ideas."

Q. How did you think it might hurt him and his family?

A. I thought, "Doctors are not going to take that lying down. They are going to resent these disparaging remarks."

Q. What did they do?

A. You can see what they did. They went ahead here and dismissed him from the Medical Society.

Q. What did that do to him?

A. Well, that gets him out of the Medical Society.

Q. And what happens then?

A. Well, he is out of the Medical Society. [2204] He can practice in the town, but he is not a member of the Medical Society and that is our representative body and we all try to conform to its rules and regulations and try and keep the profession up to a good, high standard, and as a rule we get the cooperation of nearly all the men in it. Now and then someone—it is just like the law profession, you have men who don't adhere to the ethics of your profession.

Q. You say in this letter "In view of the situa-

(Deposition of Dr. Wallace A. Pratt.)

tion as it stands, Mrs. Pratt and other doctors feel that Miles is suffering from some persecution complex, at least of that nature, and it is expedient that he be persuaded to drop the feud and devote his talents, which he undoubtedly has, to his work." Now, how did you happen to mention Mrs. Pratt?

A. Why, Mr. Pratt was a friend of the Robinson family and thought a great deal of Mrs. Miles Robinson and the children. When I would come home from some of these meetings late at night she would say, "Why were you there so late?" "Well," I said, "they kept on arguing and [2205] talking and I couldn't get away." "Well, what was it all about?" "Well, it is about Miles Robinson, and he seems to think the men are ganging up on him or trying to get him out of town or something else, and seems to feel he is being persecuted, they are plotting against him, and he is mistaken." "Well," she says, "that is terrible"—you know, just like that. She said, "That is too bad he is acting that way." So that is the reason I stated that because Dr. Robinson's father had met Mrs. Pratt and we were fairly well acquainted—not extremely well, but fairly well.

Q. You said, "and other doctors." Whom did you mean there? A. Well, I meant——

Mr. Kimball: Let him see the letter you are reading from so he can get the context of it.

Q. (By Mr. Sembower): The third paragraph from the end.

A. Why, I meant other doctors, generally speaking.

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Q. All of them?

A. Yes, generally speaking, in the sense of the Medical Society. Yes, that is what it implies. [2206]

Q. What did you mean when you said, "suffering from some persecution complex"?

A. That was founded on the nature of his attitude. He spoke to me on the street one day and he said he wasn't going to have any grievance committee or Society interfering with his patients or what he is charging them, it was a base miscarriage of his rights. He said he wasn't going to tolerate the Medical Society determining what he was going to charge his patients, they had no right to do it and he was out after them.

Q. Did you think he was demented?

A. I think he was suffering from a persecution complex, and I think he was utterly mistaken, disillusioned about that matter about the profession trying to hurt him.

Q. Well, as a matter of fact, he was expelled, wasn't he?           A. Yes.

Q. He wasn't mistaken about that, was he?

A. Not much, no.

Q. Did you hear any discussions about perhaps holding a sanity hearing?

A. No, never. [2207]

Q. Anybody discuss with you the possibility of two doctors joining to——           A. No.

Q. ——to certify to his mental condition?

A. No, no.

Q. What was the effect of this letter?

(Deposition of Dr. Wallace A. Pratt.)

A. The letter—Dr. Robinson's father answered the letter.

Q. Do you have a copy of that answer?

A. I haven't it with me. All my papers are in Portland.

Q. We have no copy of that letter. We could serve a subpoena on you, but I suppose you would have no objection to counsel presenting a copy of that letter to us?

A. Well, it isn't available here now. I just came up from Portland and I left all my things down there.

Mr. Sembower: Could you get us a copy of that letter?

Mr. Kimball: Yes, if he could find it we will be very glad to furnish a copy of that letter.

Mr. Sembower: I will appreciate it.

A. I can give you the substance of the letter.

Q. What was the substance of it? [2208]

A. He was greatly upset and grieved and I sensed the father felt things had broken loose again, this was a recrudescence of former stormy periods in his life—this is an assumption on my part. He thought Miles was finally nicely settled and things would go along nicely, and here he goes again with something else, and he said, "I am very, very sorry," and he said, "but I am unable to come out owing to my health which is very bad, but," he said, "I will have my son Walter, an attorney in Vancouver, get in touch with you."

(Deposition of Dr. Wallace A. Pratt.)

Q. Did he indicate he thought maybe Miles Robinson's mind was breaking?

A. Well, if you want to ask my opinion, I would say that might be the proper assumption, that the father just says, "Huh." I am just assuming the father was greatly upset, to think his son was off on another binge or sorts, whatever it was.

Q. Did you ever write the father again?

A. Never.

Q. Never communicated with him again at all?

A. Never.

Q. Did you think he had drawn perhaps an exaggerated [2209] conclusion from your letter?

A. The father?

Q. Yes.           A. Not at all.

Q. You thought his inference would be a reasonable one from your letter?

A. Yes, I thought so, because he must have to communicate with the brother in Vancouver.

Q. And, of course, you do know the father changed his will with reference to Dr. Miles Robinson?           A. I had heard that afterwards.

Q. When did you hear that?

A. Oh, sometime afterwards, many months probably.

Q. Well now, he said he would have Dr. Miles Robinson's brother get in touch with him?

A. He did.

Q. Did his brother get in touch with him?

A. He did.

Q. When did that occur?

(Deposition of Dr. Wallace A. Pratt.)

A. Sometime—oh, I don't know, maybe a few weeks after I received—

Q. You had a conversation with him?

A. I did.

Q. Where did the conversation take place?

A. In Walla Walla. [2210]

Q. Who was present?

A. Just the two of us, Dr. Robinson's brother and myself.

Q. What did he say to you and what did you say to him?

A. We said plenty. I don't think I can recall it, but I can give you the substance of that.

Q. Tell us in substance.

A. Oh, he says he couldn't—I said, "Can you straighten Miles out?" He said, "Doctor, I am the last man. We just don't get along too well together; we do on a good many things, but ever since I married again the second time Miles thinks I am the next thing to a sinner," and something else and something else, "and I am sure I can't get anywhere with him," but he says, "I tell you, Father is just all broken up about this," and at a later time I saw him and he said, "Father has decided to change his will, he is so offended at Miles' action." So, well, I sort of hear all this and I didn't know, it was out of my jurisdiction, but the brother further stated, he said, "Dr. Pratt," he says, "I would give ten thousand dollars right now to have this thing settled and out of [2211] the road, get Miles quieted down."

(Deposition of Dr. Wallace A. Pratt.)

Q. Did you tell him how you thought he might get it settled?

A. I don't know. I can't say that I could give a solution.

Q. Did he ask you what might be done?

A. I don't recall that he did.

Q. Had he seen a copy of your letter to Dr. Robinson's father?

A. Not that I know of, but the Doctor may have enclosed the letter, I don't know; I imagine so. I imagine the father would do that.

Q. You must have explained to Dr. Robinson's brother what the trouble was, did you not?

A. Oh, yes. We talked about it.

Q. What did you tell him you thought the trouble was?

A. Just as I have stated in my previous deposition here; Miles was off the track on this thing and was completely mistaken in considering that the Medical Society was, or any of the members were conspiring to defeat him or injure him in any way. I said it was altogether mistaken.

Q. Did Dr. Robinson's brother tell you his father [2212] wasn't well?      A. Yes; he did.

Q. Did he tell you this was affecting his health?

A. No; he said, "Father is not sufficiently well to take any part in this," and he said—he asked me to see if I could do anything about it.

Q. But you didn't get in touch—of course, you testified a moment ago you never got in touch with Dr. Robinson's father again directly?      A. No.



(Deposition of Dr. Wallace A. Pratt.)

Q. Only through the brother?

A. That's right. [2213]

\* \* \*

(The reading of the deposition of the defendant, Wallace A. Pratt, was resumed as follows:)

Q. You said on another occasion you saw the brother. When was that?

A. I saw him in Vancouver. I was on vacation in British Columbia and we came down through Seattle and I dropped in to see him in his office.

Q. Do you remember when that was?

A. No; I can't say. It was a considerable time after that.

Q. Had the brother asked you to come see him?

A. Oh, yes. He said, "If you are ever down that way, drop in." He said, "I would like you to see our home." But I didn't go to the home; it was late in the afternoon I caught him in [2214] his office.

Q. How long were you with him?

A. An hour and a half, I judge.

Q. It was on this occasion he told you Dr. Robinson's father was going to change his will?

A. Yes.

Q. Was there anything else you remember about that conversation?           A. No; no.

Q. Did you tell any of the other doctors you were going to stop in to see him when you were up there?

A. No.

Q. Did they know you were on a vacation to Canada at that time—any other doctors?

(Deposition of Dr. Wallace A. Pratt.)

A. Not that I know of. They probably knew I was out of town.

Q. And that is the last time you saw his brother?

A. Yes.

Q. Did you have any phone calls from his brother that you haven't told us about?

A. I can't recall.

Q. Any letters from him?

A. Oh, yes. [2215]

Q. Letters from him?           A. Yes.

Q. And did you write him?

A. Yes; I answered them; yes.

Q. Do you have those letters in your files?

A. Not here.

Q. At the office?

A. No; they are not here.

Q. At home?

A. Well, my papers are all boxed up in Portland.

Q. Well, now, will you go through those papers and get those letters out and have copies made for us?    A. Well, that would be quite——

Q. If you want us to serve you with a subpoena, we will, but it means more of your time and more of our time, but we will do it because we want to see those letters very much.

A. Well, if I can. It is quite a job. All those boxes have never been uncovered. You see, I had to make different shipments from the office and the home. We broke up our home September 1st and

(Deposition of Dr. Wallace A. Pratt.)

the office and I had to send a lot of stuff to Seattle and Portland.

Q. What would you say was the substance of those [2216] letters with his brother?

A. It was just keeping him informed as to what was transpiring here, as near as I can recall.

Q. What did you tell him was transpiring?

A. Well, I said, "Miles is taking legal steps of different kinds," and as everyone knew, he had been to numerous lawyers in Walla Walla and Spokane, had been to counsel in different places and they, after looking into the matter, would throw it overboard. But that didn't stop him. He decided he knew a good deal more than the lawyers about this thing. He was in law libraries pouring night and day, firing letters out to the profession.

Q. How do you know about this?

A. I heard it.

Q. Who did you hear it from?

A. Someone; I can't tell you who.

Q. You mean you can't remember?

A. No; I can't remember.

Q. Dr. Tompkins?

A. No; I can't remember. I very rarely talk with Dr. Tompkins.

Q. And you told these things to Dr. Robinson's brother. How many letters did you write to [2217] him about it?

A. Oh, I can't tell you. I am sure not many. Maybe three or four, as near as I can judge.

(Deposition of Dr. Wallace A. Pratt.)

Q. And he replied to them? A. Oh, yes.

Q. And what did he say, in substance, to you?

A. Well, I can't recall any more than we were completely stymied. We couldn't do anything with Miles. He was on a mission and he wasn't going to be inflected.

Q. What did you want to do with Miles?

A. To quiet him down. We didn't want to be bothered with this law business, with prosecutions and all that, nor do we now. This is a kind of imposition on the medical profession, this whole business, and unnecessary—totally unnecessary. There isn't an iota of basis for the start of this thing, any more than this man has a persecution complex, we will say, and is possessed with a grandiose idea he has a mission to perform and he is going to win a victory somewhere, and if he ever did, he would have another one. He would be restless; he can't stop, he can't stop. I feel sorry for the man. He certainly isn't in [2218] a state of—his emotional state must be in a constant state of tension. You can judge from all this. This isn't the practice of medicine, this is anything but. This man has a lot of ability and if he were to apply it where he could, he would do a lot for humanity.

Q. Now? A. Yes; he could.

Q. Where?

A. Anywhere he would settle down.

Q. Here?

A. He goes from place to place, and everywhere

(Deposition of Dr. Wallace A. Pratt.)

he is trouble starts. He is suspicious of [2219] everybody.

\* \* \*

Cross-Examination

By Mr. Rosling:

Q. In your testimony, Dr. Pratt, you referred to the fact that Dr. Miles Robinson had been in trouble at various times throughout his career. In your conversations with any of the members of his family have you been advised of any incidents or character traits of his boyhood years?

A. Well, of course, I only talked with his brother. The brother said that he had had.

Q. That he——

A. That Miles had been temperamental or something of that sort, and even as a boy he had tantrums, and he said they had to put him in [2222] a straight jacket, he was so uncontrollable. I remember that distinctly, his brother telling me that.

Q. There is already in evidence, Dr. Pratt, some difficulty at Pennsylvania Hospital and some difficulty in taking the basic science examinations in Oregon. Are you aware of any other incidents in the life of Dr. Robinson?

A. One time when we were discussing some of these things, Miles and myself, he was telling me at Louisville, Kentucky—I believe he was there for a while—that things were pretty rotten there and I don't think he was successful in cleaning that mess

(Deposition of Dr. Wallace A. Pratt.)

up there, whatever it was, I don't recall, but it was certainly badly out of order at Louisville, Kentucky.

Q. Any other incidents in any other part of the country that you have knowledge of?

A. I can't recall. Let's see, my memory does not reveal at this time any other circumstances than about the whole matter of the action with the Society; they took great offense at his dispute with the Brooks people, they were convinced that he had threatened them in some way to reveal the nature of some [2223] disease he purported to have.

Q. That occurred in Walla Walla?

A. That was in Walla Walla, and they thought he was distinctly unprofessional in that matter.

Mr. Rosling: That situation we are familiar with. I have no further questions, Dr. Pratt.

#### Cross-Examination

By Mr. Smith:

Q. Doctor, I represent St. Mary's Hospital in this proceeding, which is named as a defendant. I would like to ask you if it isn't correct that you were on the staff of the hospital at the time of these matters here we are discussing? A. I was.

Q. Did you happen to be on the Executive Committee at the time Dr. Robinson was declared no longer eligible for membership?

A. I don't recall whether I was or not.

Q. Were you present at a meeting when action was taken by the staff? A. No.

(Deposition of Dr. Wallace A. Pratt.)

Q. You were not?

A. No; not as a staff. No; I don't recall anything of that nature. [2224]

Q. It is your recollection, is it not, that the staff did recommend to the authorities of the hospital that Dr. Robinson's membership on the staff be cancelled?

A. No; I may say that I was out of touch with that episode or that action. I wasn't identified with it in any way.

Mr. Smith: That is all. Thank you.

Mr. Kimball: We have no questions.

#### Redirect Examination

By Mr. Sembower:

Q. I would like to ask one or two more questions, Dr. Pratt, about Dr. Robinson's prior troubles. As I understood, you just testified that you heard from his brother he was in a straight jacket at one time, but that members of the family had not told you about any of his other prior troubles?

A. No.

Q. Where did you learn about those other prior troubles?

A. Well, partially from Miles himself at Louisville—I believe it was Louisville. He told me that he couldn't tolerate the conditions there, they weren't above-board, [2225] or something, there was always something out of line.

Q. Who told you about the Pennsylvania Hospital incident?

(Deposition of Dr. Wallace A. Pratt.)

A. I can't recall, I am sure.

Q. But you did learn about those?

A. Only very indirectly, someone intimated—I don't know who, even—that he had had trouble.

Q. Some doctor told you? A. I believe so.

Q. Maybe at a convention?

A. Maybe; I can't say, but I just heard.

Q. Would it be a convention of the Washington State Medical Association? A. No; no. No.

Q. What about a convention of the AMA?

A. No.

Q. Have you gone to those conventions?

A. Yes; I have.

Q. When did you attend those conventions?

A. I was to one about two years ago, to the State. We never discussed this matter at all, though.

Q. Did you go to the State convention in [2226] 1951? A. I think not.

Q. Did you go to the AMA convention, by any chance? A. No.

Q. Where did you learn about the Oregon examination matter?

A. I didn't know anything about that.

Q. I am sorry, did you know anything about that?

A. I had heard that not so very long ago, just before I left for Portland, something about him.

Q. But you didn't know anything about that at this time?

A. No; nothing whatever. I knew that he was in Portland, that he lived there for a while before he



(Deposition of Dr. Wallace A. Pratt.)

came to Walla Walla, and I judged he was practicing in Oregon, I didn't know. I didn't know anything about that and didn't see fit to inquire into it, but he was located in Portland, at least living there, and I assumed he was practicing in Oregon. If he didn't have his license, he probably wasn't practicing there.

Q. Did you ever talk with any officials of the State Association about your conversations [2227] with Dr. Robinson?

A. Never; never to my recollection.

Q. Or did you ever talk to any of them concerning this correspondence with his brother?

A. Never to my recollection; no.

\* \* \*

### MILDRED L. PHILLIPS

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

#### Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Mildred L. Phillips.

Q. And where do you reside, Mrs. Phillips?

A. 115 East Rose.

Q. Are you employed anywhere?

A. Not at this time, sir. [2228]

Q. What is your age, if I may ask?

A. I was born in 1886, April the 23rd.

(Testimony of Mildred L. Phillips.)

Q. Mrs. Phillips, were you a subscriber to the medical bureau when Dr. Robinson first took care of you as a patient?      A. Yes; I was, sir.

Q. Did you go to Dr. Robinson for medical treatment in 1950?      A. I did.

Q. Had you been taking medical treatment for some time previous to that from other doctors before you went to Dr. Robinson?      A. Yes; I had.

Q. What did those doctors treat you for?

A. Well, I don't know.

Q. What did Dr. Robinson find wrong with your health?

A. He found a condition, a urinal condition.

Q. Would that be a kidney condition?

A. Yes.

Q. Did Dr. Robinson have you save specimens from the kidney for him?

A. Yes, sir; he did.

Q. Did you improve, get better, under Dr. Robinson's treatment?

A. Indeed, I did, sir. [2229]

\* \* \*

Q. I hand you Plaintiff's Exhibit for identification No. 516, Mrs. Phillips, and ask you if you have seen this before?

A. Yes, sir. I wrote this check.

Q. And what is that check?

A. That check is to Dr. Miles H. Robinson, M.D., amount is \$17.00.

Q. Do you recall the purpose of that payment?

(Testimony of Mildred L. Phillips.)

A. Well, I was notified that I was responsible.

Q. When you say you were notified, are you referring to the Plaintiff's Exhibit which you just read, the letter?

A. I am referring to the letter from the medical bureau.

Mr. Sembower: I ask that Plaintiff's Exhibit 516 be admitted. [2231]

\* \* \*

Q. (By Mr. Sembower): How does it happen that you paid Dr. Robinson directly instead of the bureau paying this bill, Mrs. Phillips, if you know?

A. As I remember, I was notified by letter.

Q. Did the bureau give you any reason why you should pay this yourself, rather than the bureau?

Mr. Kimball: If the Court please, she stated she received a letter and I think that is the best evidence.

The Court: Are you asking if there was any other communication?

Mr. Sembower: Yes.

Q. Let me ask you, was there any other reason than was stated in the letter by any representative of the bureau why you were to pay this yourself?

A. I do not remember.

Q. Did any employee or representative of the bureau ever talk to you about the diagnosis of your health condition?

A. Not to my remembrance. [2232]

\* \* \*

## RALPH S. KEYES

a defendant herein, was called as an adverse witness by the plaintiff, was examined, and testified as follows:

## Direct Examination

By Mr. McNichols:

Q. Will you state your full name, please, Dr. Keyes?      A. Ralph S. Keyes.

Q. And what is your residence address?

A. 520 Bridge Street, Walla Walla.

Q. And you maintain an office in Walla Walla?

A. Yes.

Q. Where is your office located?

A. Drumheller Building.

Q. You are a physician, Dr. Keyes?

A. Yes.

Q. Are you a general practitioner?

A. Yes. [2233]

Q. Do you practice by yourself or with others?

A. By myself.

Q. Now, Dr. Keyes, were you a member of the Walla Walla Valley Medical Society at the beginning of 1950?      A. Yes.

Q. When did you join the society or its predecessor?      A. Shortly after I came to town.

Q. When was that?      A. 1941.

Q. And you commenced practicing medicine at that time?      A. Yes.

Q. What offices have you held, Dr. Keyes, in the Walla Walla Valley Medical Bureau—Medical Society?

(Testimony of Ralph S. Keyes.)

A. I have been a secretary and trustee and a president.

Q. Have you held any offices in the organization we refer to as the Bureau?      A. Yes.

Q. What offices there?

A. I have forgotten.

Q. Have you held offices in the Washington State Medical Association?      A. No.

Q. And you are a member of the AMA?

A. Yes.

Q. During the calendar year 1950, Dr. Keyes, what was your [2234] official capacity with the society?      A. Secretary.

Q. And as secretary, were you a trustee?

A. Yes.

The Court: When were you secretary, did you say?      A. 1950.

The Court: Oh.

Q. (By Mr. McNichols): And you were trustee all during 1950?      A. Yes.

Q. And did you hold any office during 1951?

A. No.

Q. And then, as I recall, you were president of the society during 1952, is that correct?

A. That is correct.

Q. Now, there was a meeting held, Dr. Keyes, on the 11th of October, 1950, at which Thomas Brooks made a complaint against Dr. Miles Robinson. I notice from the minutes it appears that you weren't present at that meeting. Do you recall whether you were or not?      A. I was not there.

(Testimony of Ralph S. Keyes.)

Q. You were not present. Do you recall whether or not you were requested to be present?

A. Yes; I was.

Q. Did other duties require you to be elsewhere?

A. That is correct. [2235]

Q. When then, Dr. Keyes, did you learn the details of this complaint which Mr. Brooks had made?

A. As far as I can recall now, I learned the details when I heard him make the complaint on November 21, 1950, at 8:00 o'clock in Dr. Ralston's office.

Q. That was the regular hearing before the trustees?

A. Yes; that is the only thing I can swear to. Now, I might have known about it before, but that is all I can swear to.

Q. If at any time you wish to refer to the minutes of the various meetings, you just say so.

Now, there was a meeting of the trustees with respect to the Brooks complaint on the 9th of November, 1950, do you recall offhand?

A. The night of November what?

Q. November 9th, 1950?

A. November 9th.

Q. Just a moment, I will let you see the minutes. These were the minutes of the meeting of the board of trustees held on the 9th of November, 1950, and contained in Defendants' Exhibit 447.

A. Oh, this was when Judd Kimball was there. Yes; I recall that. It was a short meeting after the regular society meeting.

(Testimony of Ralph S. Keyes.)

Q. And that meeting was held apparently at the Grand Hotel? [2236]

A. Yes, yes; I recall that.

Q. Was it customary for you to hold your meetings somewhere other than St. Mary's, a trustees' meeting?

A. Oh, there was no customary place for holding trustees' meetings, as I recall.

Q. You held them whenever you were requested to appear? A. That's right.

Q. Some were held at the Marcus Whitman, some at the Grand Hotel, some at other places, were they? A. That's right.

Q. How were these meetings set up? Were you just notified at the society meeting that there would be a later trustees' meeting?

A. Oh, for instance, this one here, as I recall, during the meeting it was asked that the trustees meet afterwards. In other words, there was no prior notice of it.

Q. You are speaking of the meeting of November 9th?

A. This November 9th one, that's right.

Q. Is that the meeting at which Mr. Kimball appeared? Also, I notice Dr. Stevens was present at that meeting. Do you know how he happened to be there?

A. No; I don't, but anyone could be present who wanted to be and I suppose he figured he had an interest in it.

(Testimony of Ralph S. Keyes.)

Q. Did you adjourn as a group to the Grand Hotel, or—— A. We were there. [2237]

Q. Oh. This was a special meeting, I notice. The society didn't meet at the hotel, did it?

A. Yes.

Q. Oh, they did?

A. If I am not misinterpreting the meeting, why, that was the one, the trustees' meeting followed the regular society meeting.

Q. Now, you indicated that meeting of November 9th was quite short. How long would you say it lasted? A. Oh, an hour.

Q. Was that short for a trustees' meeting?

A. Oh, very short.

Q. How long did your meetings normally last, the trustees' meetings?

A. Oh, from about 1950 to 1951, why, they were lasting three and four hours.

Q. Now, you were apprised of the Brooks complaint at the meeting of November 9th, were you not? A. Does it say so in the minutes?

Q. Well, yes. A. Well, if it does, we were.

Q. If you wish to refer to the minutes. Do you recall what discussion there was at that meeting after refreshing your memory from the minutes with respect to the Brooks complaint? [2238]

A. What is your question now, please?

Q. Do you recall any discussion at that meeting about the Brooks complaint?

A. Unless you ask some specific question, I don't.



(Testimony of Ralph S. Keyes.)

Q. Well, do you remember Mr. Kimball reading the prepared complaint?

A. I know he read something and I suppose that is what it was.

Q. Well, prior to that meeting, Dr. Keyes, did you even know that there had been a complaint registered against Dr. Robinson?      A. Yes.

Q. How did you learn that?

A. When I was asked to be present in the bureau office at 5:00 o'clock at that time that you previously asked me if I were there and I said I was not.

Q. Oh, I see. Were you aware of what was going to occur at that meeting?

A. I was aware that there was going to be a complaint made which had potential of serious trouble in it.

Q. Did you know that it was going to relate to Dr. Robinson?

A. I am not positive whether I was apprised of that or not.

Q. The meeting we have just referred to was the meeting of October 11th which you didn't attend?

A. That's right. [2239]

Q. Did you at any time during this period direct or request Mr. Fullerton to communicate with the state association with respect to a state grievance committee?      A. Did I?

Q. Yes.

A. Well, I trust you understand that being a secretary of the society involved no more than any other trustee. I mean, that is a nominal title, that

(Testimony of Ralph S. Keyes.)

we employed this executive secretary to do the work, and I had no more duties than to get the speakers and I was no more than a trustee, actually, so just because I am secretary doesn't mean that I directed the executive secretary to do something.

Q. No; I was merely asking you, I wasn't implying it. I will show you Plaintiff's Exhibit No. 23—

A. We are in 1950 now, are we?

Q. 1950, I am referring to Plaintiff's Exhibit 23, which is dated October 16, 1950, a letter from Mr. Fullerton to Mr. Neill of the state association.

A. Now you are asking if I directed him personally or as a member of the board of trustees to write this letter?

Q. In any respect, if you recall; yes?

A. I don't recall anything about this; no.

Q. Do you know anyone else who directed him to write that letter? [2240]

A. Well, I am sure if he wrote it, why, he was asked to write it by the board of trustees as a group, but to ask me if I recall voting on something like that, why, no; I don't.

Q. He wouldn't have written it on his own volition?

A. No.

Q. Now I show you Plaintiff's Exhibit 24, which is a letter from Mr. Neill to Mr. Fullerton, obviously in answer to the letter of October 16th, and ask you if you have seen that before to your knowledge?

A. No; I don't recall seeing that.

Q. Do you know whether that was ever pre-

(Testimony of Ralph S. Keyes.)

sented to the board of trustees for their consideration? A. I don't recall one way or the other.

Q. Now, Dr. Keyes, do you remember receiving a copy of Dr. Robinson's complaint against the grievance committee which was lodged with the board of trustees?

A. I'm sorry, I didn't hear.

Q. To refresh your memory, I will show you Plaintiff's Exhibit No. 37, which is a communication to the board of trustees of the Walla Walla Medical Society from Dr. Robinson dated November 7, 1950, and ask you if you recall seeing that document or a copy of it before?

A. Just one that we were all—is this one that we were all circularized with? [2241]

Q. Well, it was directed to each member of the board of trustees. You were on the board of trustees at that time.

A. Well, I must have seen it, but whether I read it or not, I don't recall.

Q. Do you recall receiving it?

A. Want me to read the whole thing to see if I can remember?

Q. No, no; I just thought it might refresh your memory if you glanced at it.

A. I don't recall ever seeing it.

Q. Do you recall ever discussing the contents of this document at a meeting of the board of trustees?

A. Discussing the contents of that letter with the board of trustees?

Q. Yes; Dr. Robinson's complaint against the grievance committee?

(Testimony of Ralph S. Keyes.)

A. Well, we discussed many things in those days. I just can't recall whether we discussed that letter or not.

Q. Well, then, Dr. Keyes, I will refer you to the trustees' meeting of October 24th, 1950. Along that line, were you familiar during this period with the so-called Edwards complaint which had been made against Dr. Robinson?

A. The dollar and a half? [2242]

Q. Yes. A. Yes.

Q. Who had apprised you of that, do you remember? A. No; I don't.

Q. You were present at the meeting of the board of trustees held on the 24th of October, 1950, were you not? A. It states that I was.

Q. Do you recall the discussion which is indicated in these minutes with respect to the local grievance committee?

A. Yes; I recall that there were rules set up as far as the grievance committee would act.

Q. Were those promulgated as a result of the difficulty that arose over the Edwards complaint? For your information, the Edwards complaint was disposed of approximately a month before that.

A. No; as I recall, this was in line with something that was started back in April of that year and that was just to further set up the grievance committee because it was still in the formative stages. I don't recall that we had any special meeting, you know, something special to go into it because of the Edwards complaint.

(Testimony of Ralph S. Keyes.)

Q. You feel it is more of a coincidence than the net result?      A. That's right. [2243]

Q. Then you were present, Dr. Keyes, I believe you stated, at the meeting of the trustees which was held on the 21st of November at which Mr. Brooks again reiterated his complaint?      A. Yes.

Q. Did you hear all the testimony at that meeting?      A. Yes; I did.

Q. From the time you first heard of the Brooks complaint, did you ever communicate with Dr. Robinson in any respect between that time and the time of the 21st of November hearing?

A. Well, weren't we working together at the penitentiary then, Miles?

Q. Well, if you remember.

A. Well, I mean, gee, we saw each other every day as far as I know.

Q. I will put it this way: Did you ever mention to Dr. Robinson that this complaint had been made by Mr. Brooks?      A. Sure.

Q. When; do you recall?

A. I recall in the parking lot at St. Mary's.

Q. Do you know approximately when it [2244] was?

A. I don't even know what year it was, but I know I talked to him about it.

Q. Was that shortly after you learned about the complaint?      A. I suppose.

Q. What did you say to him at that time?

A. To the best of my recollection, I can't recall anything I said. I know I talked to him about a

(Testimony of Ralph S. Keyes.)

complaint that was being made. I wanted to know if—well, I had heard through the grapevine that this disease that Mrs. Brooks was supposed to have had was not substantiated by other examination by other doctors and I asked him if he had heard of that.

Q. And what did he say?

A. I have forgotten.

Q. But you had a general discussion with him about it? A. That's right.

Q. Did he indicate to you that that was the first time he had heard anything about the Brooks complaint?

A. No; I think he knew about it before. It might have been I might have told him, the first one, but I doubt it.

Q. Well, to your knowledge, had he ever had any formal notification at that time?

A. Well, now, you see, I can't even recall when it was I talked to him in the parking lot and—I don't know. [2245]

Q. The November 9th hearing of the trustees, Dr. Keyes, do you believe or do you think it was just a coincidence that Doctors Lyman, Johanneson, Stevens and Judd Kimball were there?

A. I think that they must have had more than passing interest in it or they wouldn't have taken the time to stay.

Q. But none of those were trustees at that time?

A. No.

Q. How many of the trustees' meetings, if you recall, did you have an attorney present?

(Testimony of Ralph S. Keyes.)

A. I beg your pardon?

Q. How many of the meetings of the trustees do you recall at which there was an attorney present for the society?

A. You mean prior to November 9th or after that up to the present?

Q. Prior to that time.

A. Prior to November 9th? I don't recall his being present on any occasion prior to that.

Q. Were you present at the meeting of the society on the 20th of November, 1950, the night before the trustees' hearing? To refresh your memory, that was the meeting which was called at the request of Dr. Robinson.

A. The night before the trustees meeting over in Ralston's office? [2246]

Q. Yes. A. Does it say I was there?

Q. I don't know.

A. Yes; here is my name. Now, what was taken up?

Q. That was the meeting at which the motion was made whether or not the grievance committee should be continued and also whether a letter should be written to the Edwards withdrawing the former letter.

A. No; I don't recall that. I have heard about a close vote and I don't recall anything about that.

Q. But your name appears there, you were likely there, however?

A. Apparently so, unless I was called out early.

Q. You don't remember what occurred?

(Testimony of Ralph S. Keyes.)

A. No; I don't.

Q. Do you recall how you voted on the grievance committee?

A. I don't think I was there when the vote was taken.

Q. Oh, I see.

A. If I had been there, I would have voted to continue the grievance committee.

Q. Pardon?

A. Had I been there and voted, which I don't think I was, I would have voted then and would still have voted to continue the grievance committee.

Q. Did you know at that time that the grievance committee [2247] had never established any rules of procedure?

A. Whether they had ever established any rules of procedure?

Q. Yes?

A. I knew it was in the mill. I don't think there was definite rules adopted until later on the next year.

Q. Did you attend the annual meeting that year, Dr. Keyes, on the 14th of December?

A. Is my name there as being present?

Q. Well, I thought you would remember the annual meeting. Here are the minutes.

A. Yes.

Q. Yes; you were there?           A. Uh-huh.

Q. Do you recall the discussion at that meeting about the grievance committee? You might want to refresh your memory briefly.



(Testimony of Ralph S. Keyes.)

A. Where does it say about that? Down here?

Q. No; it says: "Doctors Stevens, Robinson, Pratt, Keyes, Lange and Smith spoke on the motion." A. And the motion was what?

Q. The motion, I believe, was whether or not the letter should be sent to the Edwards. That is the motion that was tabled and amended several times.

A. This has to do with sending the letter to the Edwards? [2248] You mean that dollar and a half letter?

Q. Yes; do you recall that incident?

A. And I spoke on it?

Q. If you don't recall——

A. Well, I recall of getting up at some meeting. And now whether this is the one or not, and I had been in favor of Dr. Robinson to have his say, and so on, and I know I got up in a meeting and I thought I was pretty cute, you know, and so I brought up that I didn't want to be in the position of a rat leaving a sinking ship, but I certainly felt that Dr. Robinson had made a misstatement of fact, and whether I called him a liar in public or not, I don't know, but I certainly was a little exorcised about something he had said. What it was right now——

Q. You were somewhat violently opposed to him at that time, were you? A. Yes.

Q. And then did you attend the April 22nd meeting of the state grievance committee in 1951?

(Testimony of Ralph S. Keyes.)

A. April 22nd meeting of what?

Q. Of the state grievance committee held at the Marcus Whitman Hotel on April 22nd.

A. That was on a Sunday?

Q. I believe it was; yes. [2249] A. Yes.

Q. Did you remain present throughout that meeting? A. Yes.

Q. Did you hear the testimony that was presented there? A. Yes; I did.

Q. You had also heard the testimony that was presented at the trustees meeting, had you not, on November 21, 1950, the hearing on the Robinson matter? A. Yes.

Q. Did you at that time observe that the testimony of Noel Edwards with respect to what was said to him by Dr. Robinson differed in those two meetings?

A. I'm sorry, I can't hear very well.

Q. Oh. Do you recall Noel Edwards testifying at the meeting of November 21, 1950, before the board of trustees, the son-in-law?

A. Yes; I recall his being there.

Q. Do you remember his testifying at the April 22nd meeting before the state grievance committee?

A. Not specifically.

Q. Did you attend the so-called expulsion meeting on the 22nd of May, 1951, at which time Dr. Robinson was expelled? A. Yes; I did.

Q. Did you hear Noel Edwards testify at that meeting? [2250] A. Yes, yes; I did.

Q. Did you at that time observe any differences

(Testimony of Ralph S. Keyes.)

in his testimony of the various occasions that he testified?      A. No.

Q. Do you recall what transpired during the May 22nd meeting when Dr. Robinson was out of the room? That is the expulsion meeting I am referring to.

A. Yes; whether I recall it or it has been brought to my mind by minutes, and so on, and talking with lawyers, and so on, since, but a motion was made to the effect that he be suspended for six months and then someone else made a motion that he be expelled.

Q. Do you recall any discussion of the second motion?

A. Well, when, for instance, when Dr. Kincaid was on the stand and mentioned that Walter Cowan had spoken for moderation and I recalled that then, and if you asked me a specific question, I might be able to answer, but just to pick it blank, I can't.

Q. Do you recall Dr. Tompkins getting up and talking?      A. Well, he presided at the meeting.

Q. How about Dr. Page?

A. And Dr. Page always talks at every meeting.

Q. Did he get up and talk in favor of the motion to expel?      A. I believe he did. [2251]

Q. Do you remember what he said, in substance?

A. No, I don't; but, of course, I know what he meant now. I mean, I know he felt if we just suspended, he would be back in the society in six months and we would have no chance to look him over, so to speak, in the meantime, and that if we

(Testimony of Ralph S. Keyes.)

expelled, then he could reapply at the end of the year, and then if we weren't satisfied that he had changed his attitude any and was still going to feel as he did then, why, we still didn't have to take him back in, but if we suspended, we would have to take him back in.

Q. In other words, you wanted to be certain you had control over him at the end of the year?

A. That's right.

Q. What did you mean by his attitude, Dr. Keyes?

A. Well, if he still felt that he had been acting according to the ethics, threatening to use a club over someone's head unless they came across, and so on, if he still felt that was right.

Q. What is this club? What did you refer to as a club over someone else's head?

A. Well, you know, the Edwards threat.

Q. Are you using the term figuratively?

A. Yes.

Q. In other words, was it Dr. Robinson's criticisms of the [2252] grievance committee and his criticisms of the bureau that you had in mind?

A. No; it was—well, the word "blackmail" has been used before. It was that sort of tactics that we had in mind; that he had never denied that he had threatened the Brooks and the Edwards family with this revealing privileged information, and so on, he had never denied.

Q. You had never heard him deny it?

A. Beg pardon?

(Testimony of Ralph S. Keyes.)

Q. You had never heard Dr. Robinson deny that he had threatened them?

A. I had heard him deny that he had threatened them, but he never came out and said he had refused to—that he had never come out and said that if you didn't give me that letter, I would reveal the nature of your disease to your family and to the health authorities. He had never denied saying that.

Q. You have heard Dr. Robinson's explanation of his position on it, then, had you?

A. Oh, yes. I had that at that November 21st meeting.

Q. And he had denied any threat, had he not?

A. He denied using a threat, but nevertheless he never denied just what I went through. In other words——

Q. Well, then, you felt that even assuming that the statement that Dr. Robinson made with respect to his position [2253] on the Brooks matter were true, that he still should be expelled?

A. Well, I say he never had denied saying that if you didn't get the letter, he would reveal the nature of the disease to the Edwards family and also to the health authorities, public health authorities. He never had denied that.

Q. Well, in your activities. in your voting on this matter, were you acting on the assumption that he never had denied such a thing?

Mr. Kimball: The witness has answered the question.

A. That was part of it.

(Testimony of Ralph S. Keyes.)

Mr. Kimball: The witness has answered the question two or three times.

Mr. McNichols: I don't recall him answering that question. I asked him what he had in mind when he took the action.

The Court: What was the last question?

(The question was read.)

The Court: Do you understand what the question is?      A. Yes, sir.

The Court: All right, you may answer. Objection overruled.

A. That was taken into consideration, certainly.

Q. (By Mr. McNichols): Well, you, as a matter of fact, Dr. [2254] Keyes, and the other doctors were quite incensed about Dr. Robinson's general behavior during this time, weren't you?

A. Certainly.

Q. You were disturbed by the fact that he was writing letters concerning the grievance committee and had written letters concerning the bureau?

A. Oh, we didn't care how many letters he wrote. We didn't care what he said, but we hated to take up all of our time for evenings on end, three and four hour meetings about this whole thing. Certainly, we were annoyed with it.

Q. What meetings are you referring to now?

A. Oh, gee, we had meetings galore.

Q. Are you referring to the meeting you went to on the 21st of November?

A. Oh, we had meetings all the time, two or

(Testimony of Ralph S. Keyes.)

three meetings a month, business meetings, and so on, on this thing, and sure it annoyed us.

Q. Didn't Dr. Robinson call only one meeting himself?

A. I don't know, you can answer that better than I.

Q. Do you know of any other meeting that he instigated?

A. Well, he instigated about—as I say, two or three a month of lengthy meetings just because of this whole thing. I mean, this wouldn't have been precipitated [2255] if it hadn't been for Dr. Robinson in the first place.

Q. Oh, you mean the meetings were called by yourselves but they referred to Dr. Robinson?

A. Sure, certainly.

Q. Well, he had nothing to do with calling those meetings, did he?

A. Well, no; he wasn't an officer in the society.

Q. Well, then——

A. And even a meeting that he might request would still be called by an officer of the society. He wouldn't call a meeting and get us there because we wouldn't go if he called the meeting.

Q. Did you feel——

A. Have to be requested. I beg your pardon?

Q. Did you feel that that was an imposition upon yourself and the other members to have to attend these meetings?

A. Oh, wouldn't you get tired of going out every

(Testimony of Ralph S. Keyes.)

evening and spending three or four hours in a meeting three and four times a month?

Q. Well, now, take the October 11th meeting at which Mr. Brooks made his first complaint. Was there anything Miles Robinson could have done to prevent that meeting?

A. October 11th, I wasn't there. [2256]

Q. That was the meeting you testified you were called to and couldn't attend?

A. Yes. And your question was?

Q. Was there anything he could have done to prevent that meeting or make it shorter or anything of that nature?

A. Well, I'm not referring to that one specifically because I wasn't there and therefore the general buildup of annoyance wouldn't be precipitated by that one because I wasn't there.

Q. What meetings that you had could Dr. Robinson have been responsible for shortening or doing away with?

A. Well, I know that we never had these long meetings before Dr. Robinson was in town, we haven't had them since, so my assumption is that he was responsible for the long meetings.

Q. That is an assumption of yours, then?

A. That is an assumption.

Q. You felt during that period that the fact you were having these meetings was the responsibility of Dr. Robinson?

A. That's right.

Q. Now, there was during this period a general feeling of resentment, was there not, on behalf of



(Testimony of Ralph S. Keyes.)

the officers and trustees of the society against Dr. Robinson?      A. Yes. [2257]

Q. What did that arise from, that resentment?

A. Arose from all this foolishness that had been—I mean, everybody felt that the dollar and a half thing was a lot—either pay the bill or somebody, you know, get the thing out of the hair, get over with it. It was just—it seems so silly and, obviously, it still does to me.

Q. Well, the dollar and a half thing as you refer to it, wasn't the main consideration after the 11th of October, was it, 1950?

A. You say the dollar and a half was not the main consideration?

Q. Yes. In other words, that occurred in August—

A. That was in September. What are we driving at? I mean what is the question?

Q. In other words, you stressed importance of the dollar and a half matter?

A. Oh, well, I mean it started—that is the thing that sticks in my mind as the start of the thing, you see, and it seemed so trivial.

Q. Is that what you had in mind all during this proceeding when you say it was all trivial?

A. During what proceeding? This right now?

Q. No; the subsequent expulsion, and so on, all the meetings that you referred to as being unpleasant? [2258]

A. Well, the meetings were unpleasant because they lasted so long. Yes, I mean having the thing

(Testimony of Ralph S. Keyes.)

being blown up into such proportions from such a small—it seemed like a small matter to me.

Q. Well, now, after the 11th of October, when the Brooks complaint was made, what could Dr. Robinson have done to prevent the holding of all these meetings, and so on?

A. I don't know. What do you think he could have done?

Q. Well, now, I am asking you. You stated you felt he was responsible for them and I am asking——

A. Well, I think he was.

Q. What could he have done to have prevented them at that point after the Brooks complaint had been made? If he had come in and apologized would they have dropped the whole thing?

A. You mean apologize for what?

Q. For writing these letters that were critical of the grievance committee and the bureau?

A. Oh, as I recall, we had been informed——

Mr. Rosling: If the Court please, that is calling for speculation and conjecture and hindsight, and I don't think we should take the time of the Court and I object to it.

Mr. McNichols: Your Honor, what I am getting at here is the motive of this thing and I feel that this witness [2259] can testify as to what the primary motive was for pressing this matter.

A. For who pressing the matter?

Mr. McNichols: For the society pressing this matter against Dr. Robinson.

(Testimony of Ralph S. Keyes.)

A. Didn't press any matter against Dr. Robinson, Judge.

The Court: Go ahead.

Mr. McNichols: Pardon?

The Court: Go ahead.

A. Just telling the Judge we didn't press any matter against—it all started from—didn't it all start from that dollar and a half letter and then a month or so later, why then, Mr. Brooks came around and made the complaint? It was all part and parcel of the same thing, wasn't it? I mean—

Q. (By Mr. McNichols): Well, Dr. Keyes, the trustees and officers of the society pressed charges against Dr. Robinson, did they not, referred them to the state grievance committee and held a hearing?

A. Is that pressing charges?

Q. Well, you can call it what you like.

A. I mean we never considered ourselves as lawyers or judges or jury of anything. If that is pressing charges, why, OK, I will put in with you, but I don't know what you mean by pressing charges. We were trying to see that [2260] justice was done on both sides and we had Mr. Brooks' statement—at least, this is hearsay and you have heard it a thousand times before—we had Mr. Brooks' statement that if we didn't do something about it, he would, and we were trying to protect one of our members so that there wouldn't be another lawsuit on our hands, and so therefore, we were trying to use efforts to settle Mr. Brooks' complaint.

Q. To settle it?

(Testimony of Ralph S. Keyes.)

A. Settle Mr. Brooks' complaint, that's right.

Q. How were you going to settle it?

A. By investigating the matter and seeing if it had any merit, and I am sure you have a history of that.

Q. Pardon?

A. And I am sure you have a history of the efforts that were made to settle the complaint.

Q. Well, the only thing is, Dr. Keyes, the Court doesn't as yet have the history of it and that is what we are trying to get across. But, in any event—

The Court: If I haven't got the history of it, I have had plenty of time to get it, you have had plenty of time to present it, I will say that.

A. Thank you, Judge.

The Court: I don't know how many more weeks we would need. Go ahead. [2261]

Q. (By Mr. McNichols): Were you in fear of harm from Dr. Robinson, Dr. Keyes? A. No.

Q. Do you know of any other members of the society that were?

A. I had heard several members express the opinion that they feared violence, yes.

Q. Now, Dr. Keyes, you were president of the society during the year 1952, were you not?

A. Yes.

Q. Were you present at the time you received the telegram from the AMA?

A. Well, I suppose that telegram was delivered to somebody's office, probably Charlie Fullerton's

(Testimony of Ralph S. Keyes.)

office, and I am sure I wasn't there when it was delivered, no.

Q. Well, you have seen the telegram?

A. I have seen it, yes.

The Court: When were you president, 1952?

A. Yes, 1952.

The Court: The calendar year of 1952?

A. Yes, sir.

Q. (By Mr. McNichols): Does that appear to be the telegram that you received on the 1st of February, 1952?

A. Yes, sir, that's right.

Q. And what were your objections then to reinstating Dr. [2262] Robinson, Dr. Keyes?

A. Right then?

Q. Yes.

A. Well, we felt the amount of effort we had put into this thing, that we certainly should have more to go on than a telegram to reinstate a man that we spent all this time going over the history of the thing, and then if we just go ahead and receive a telegram out of the blue, how did they know that anybody could send a telegram like that, no signature on it or anything? In a court of law, is a telegram assumed? If I wanted to make a will and have it sent to New Hampshire, is a telegram sufficient evidence that I changed my will? I mean, we never considered that as legal evidence.

Q. Have you ever seen a telegram that had any more of a signature on it than that?

A. No, I never had.

(Testimony of Ralph S. Keyes.)

Q. You didn't question the authenticity?

A. Yes, we did.

Q. Oh, you did? Did you think it might have been from someone other than the Judicial Council?

A. Yes, with all the shenanigans that had been going on as far as we were concerned in the last year or so, why, anything could happen.

Q. Did the other officers of the society feel that that [2263] was probably not a telegram from the Judicial Council of the AMA?

A. I don't know how they felt. If I did, I have forgotten.

Q. At the time you expelled Dr. Robinson, or at the time he was expelled on the 22nd of May of 1951, were you aware that the expulsion would cause him to lose his hospital privileges?

A. Well, it is written right down there in the bylaws of both hospitals, isn't it?

Q. And you had that knowledge at that time, didn't you?      A. Yes.

Q. Do you recall, Dr. Keyes, ever reading the findings and recommendations of the state grievance committee in the Brooks vs. Robinson complaint?

A. I don't recall.

Q. Now, you wrote to Dr. Cunniffe just shortly after receiving this telegram, did you not, Dr. Cunniffe, the chairman of the Judicial Council?

A. I suppose.

Q. And protested the procedure, protested the use of the telegram in informing you?

(Testimony of Ralph S. Keyes.)

A. Well, do you have a copy of the letter that I wrote? If you do, why, I did.

Q. Just trying to save time, if you remembered it. A. Well, I don't recall. [2264]

Q. And now, you referred to the shenanigans of Dr. Robinson. Were you referring to the various criticisms he had made of the grievance committee, and so on, the letters he had written?

A. Well, we never—not that I am an oldtimer in the town—but we never had anybody yet of the short time I had been here of circularizing the whole state and the local members of the society and townspeople and everybody else with long letters. Well, I mean, that was—that is part of the shenanigans.

Q. Well, I will ask you, Dr. Keyes, if you recall this testimony on your deposition taken in January of 1956— A. Nineteen—when?

Q. Nineteen fifty-six. (Reading):

“Q. Did you have any real doubt in your mind that the telegram was an authentic telegram from the AMA?

“A. Now, what telegram is that? The one saying that the Judicial Council reversed our decision?

“Q. That's right.

“A. No, I don't think there was any serious doubt as to whether it was an authentic telegram or not.

“Q. Well, why, then, didn't you reinstate? The ruling [2265] was in, wasn't it?

“A. We had kicked him out prior to all this.

(Testimony of Ralph S. Keyes.)

“Q. Yes. Oh, long before this, you see. You see, the hearing, he was kicked out the preceding spring, he was out all that way, and the hearing was held in Los Angeles, and now we are back, you see into the—— A. This is February of '52?

“Q. Yes, February of '52. You see, he didn't accomplish restitution until early in the summer.

“A. Well, I don't know how much contact you have had with the doctors in the past, but they are a pretty independent lot and they feel like they like to do their own thinking and did—We probably felt that we had kicked him out and we could take him back when the year was up.”

Subsequently on the same page:

“Q. In other words, you were trying to get the whole year in?

“A. Well, I don't think there was any feeling that we had him out on the hill for a year and were going to show him——”

Mr. Rosling: If your Honor please, nothing that he [2266] has read tends toward impeachment in any way. It is on a different subject matter and I think it is an improper use of the deposition of the witness. The witness is present and is here.

Mr. McNichols: I am merely asking the witness if he recalls this testimony.

The Court: Pardon?

Mr. McNichols: I am merely asking the witness if he recalls that he gave this testimony.

Mr. Rosling: I don't think that makes any difference. I don't think he is entitled to read a deposi-



(Testimony of Ralph S. Keyes.)

tion on an extraneous subject matter and ask him if he recalls. If he wishes to lay a basis for impeachment, let him ask the question. If he testifies differently, why, then he can produce the deposition.

The Court: I think you may use the deposition or you may call the witness, you should give him an opportunity to testify, and then if it is inconsistent with the deposition, call his attention to the deposition.

Mr. McNichols: All right.

Q. Well, then, what was the attitude of the society and yourself, Dr. Keyes, with respect to whether or not you should observe the ruling of the Judicial Council as expressed in the telegram we have been discussing? [2267]

A. The attitude was that we wanted a more official—letter or more official announcement of the Judicial Council's ruling on the subject than a telegram, and we felt that we should have some of their reasons for it. We wanted to go into it a little more fully and, also, as I recall, the subject of an appeal came up. We were going to appeal that finding.

Q. Did you feel, in effect, that you had expelled him and didn't want the Judicial Council telling you what to do?

A. No, the Judicial Council was, as far as we knew, a respected body.

Q. You would observe their findings?

A. Certainly.

Q. Their decision? A. Certainly.

Q. Well, now, getting back to the testimony I

(Testimony of Ralph S. Keyes.)

was reading from your deposition, Dr. Keyes, I will ask you if you remember this:

“Q. In other words you were trying to get the whole year in?

“A. Well, I don’t think there was any feeling that we had him out on a hill for a year and were going to show him, but it was just the idea that we had—as I say now, this [2268] is purely from——

“Q. Yes, from memory.

“A. ——and as to what I would assume that we felt, that we put him out and we weren’t going to let any Judicial Council decision here, which we felt was wrong, deter us from that.”

Q. Now, did that——

A. We weren’t going to let any Judicial Council, which we felt was wrong interfere?

Q. “Deter us from that.”

A. Deter us from that?

Q. Yes.

A. All right, the record will show that we appealed the Judicial Council ruling and, therefore, we felt that they were wrong or we wouldn’t have appealed it.

Q. But that was your feeling at that time and it is now, is that right?

A. That we weren’t going to let the Judicial Council deter us from a year or being out a year?

Q. Well, I’m using your testimony.

A. Well, I hope you recognize that someone greater than I once said that consistency is a hobgoblin of small minds. I have got to say the same

(Testimony of Ralph S. Keyes.)

thing that I said three months ago on some—I mean, use the same words. [2269] And now, what do you want to know? What is the question?

Q. What I want to know fundamentally is, first of all, why after the Judicial Council had reversed this thing, Dr. Robinson was kept out of the society for a substantial period of time? [2270]

A. Why was he kept out?

Q. Yes?

A. Because we were going to appeal that ruling of the Judicial Council. We felt that we had not had a fair shake down in Los Angeles, I think it was, where the hearing took place; that we were apprised of the hearing only a few days before it was to take place. We didn't have the documents with us. That Judicial Council, at least the report we got back from Page and Tompkins was that they weren't given a chance to say anything; that when they went to speak, why, they were shut up; and, therefore, our minds locally were made up on the notion that we were not given a fair hearing and therefore we were going to appeal the ruling and we were not going to take Dr. Robinson back in until we had had a chance to appeal it.

Q. So now, when you took that position and that feeling, were you concerned only with the fact of the Brooks complaint or with the general attitude toward Dr. Robinson that existed over the past year?

A. Well, we took that feeling from the action of the Judicial Council, because, at least as I recall now, we felt that we hadn't had a fair hear-

(Testimony of Ralph S. Keyes.)

ing [2271] and therefore we were going to appeal the decision.

Q. Do you recall certain communications that took place approximately that time between the original decision and the rehearing?

A. Well, I have been shown before a letter that I wrote to Dr. Benson, who then, I think, was state president.

Q. Well, I show you Plaintiff's Exhibit 232 and ask if you recall seeing that before? It is a letter dated June 26, 1952, purportedly from you and Dr. Tompkins to Mr. Neill?

Mr. Tuttle: Bob, I can't hear what you are saying back here.

Mr. McNichols: Referring to 232, Mr. Tuttle, the letter from Dr. Keyes and Dr. Tompkins to Mr. Neill.

Mr. Tuttle: Yes.

A. Well, why have two people supposedly signed this? I mean, is this a photostatic copy of two separate letters all on one sheet? I mean, there is one part signed by me and one part, another part, signed by Dr. Tompkins.

Q. Do you recall seeing it in that form before?

A. (No response.)

Q. Now, Dr. Tompkins was assisting you in handling this matter at this time, wasn't he?

A. Yes. I don't recall any letter with Dr. Tompkins' [2272] signature at the bottom and mine up here, no.

Q. Dr. Tompkins says here:

(Testimony of Ralph S. Keyes.)

“It is our local hope that a copy of this suit,” speaking of the civil action filed in the state court, “will be placed in the hands of each of the Judicial Council members before their decision is written.”

A. Yes.

Q. What effect did you think that could have on your factual situation?

A. Want to let them know what the local situation was.

Q. Did you feel that could influence the decision of the Judicial Council?

A. Well, we must have felt that or we wouldn't have wanted them to have a copy of the suit.

Q. Then, you were motivated by something more than the feeling you hadn't received a fair shake at the hearing, were you not?

A. What is the date on this letter now?

Q. The letter which I just referred to, Exhibit 232, June 26, 1952.

A. Well, if you had a suit of \$136,000.00 facing you, that would motivate you some way, wouldn't it?

Q. Now, Dr. Robinson requested reinstatement shortly [2273] after he received the letter from the Judicial Council, did he not?

A. I suppose. I would take your word for it.

Q. I will show you a letter dated February 18, 1952, marked Plaintiff's Exhibit 166, from Miles Robinson to Dr. Keyes, and ask you if you recall seeing that letter or a copy of it?

A. Yes, I recall this.

(Testimony of Ralph S. Keyes.)

Q. Did you receive it shortly after February 18, 1952?      A. I don't know.

Q. Now, I show you a letter dated February 29, 1952, marked Plaintiff's Exhibit 172, purportedly from yourself to Dr. Robinson. Do you recall writing that letter?      A. Yes.

Q. It is a letter informing Dr. Robinson that he was not to be reinstated, at that time, is that right?

A. That's right.

Q. You also wrote to Dr. Benson of the state association about this time, did you not, concerning the appeal?      A. Yes.

Q. And did you receive this letter dated April 14, 1952, from Mr. Zimmerman of the Washington State Medical Association, Plaintiff's Exhibit 200?

A. Well, here is my note here that asked John Davis to [2274] file this under the appropriate head, so naturally I received it.

Mr. Rosling: What letter are you referring to?

Mr. McNichols: It is a letter from Bruce Zimmerman to Dr. Keyes, dated April 14, 1952, Plaintiff's Exhibit 200. It reads as follows:

"At the April 9, 1952, meeting of the Executive Committee of this Association a communication relative to the AMA Judicial Council's decision on Dr. Robinson's appeal from the action of the Walla Walla Valley Medical Society was read and the following action taken:

" "It was moved, seconded and carried that: \* \* \* the Walla Walla Valley Medical Society be informed this matter has been taken under advise-

(Testimony of Ralph S. Keyes.)

ment and will be submitted to the Board of Trustees for its consideration.'

“Yours very truly,

“BRUCE ZIMMERMAN, M.D.

“Secretary-Treasurer.”

Q. Dr. Keyes, when Dr. Robinson filed his suit in the state court, did you send a telegram immediately to Dr. Lull of the AMA? [2275]

Mr. Tuttle: If the Court please, all these letters and telegrams have been received in evidence with the dates on them and we haven't questioned the authenticity or that they were sent or received. It isn't pertinent to go——

Mr. McNichols: I wish to question him briefly about it, Mr. Tuttle.

The Court: Couldn't you call his attention to them and ask him the questions you want to? I don't think there is any question that they were sent.

Mr. McNichols: Yes, your Honor.

Q. Do you recall sending that, Dr. Keyes?

A. No, I don't.

The Court: Although I appreciate the fact he has got to look at them, probably, or he couldn't answer the question.

Q. (By Mr. McNichols): You don't recall having sent that? A. No.

Q. Well, it is signed Ralph S. Keyes, president of the Walla Walla Medical Society.

A. Well, you just showed me a telegram that is

(Testimony of Ralph S. Keyes.)

never signed, I mean, that is not my signature, that is a print.

Q. Do you think you didn't send that telegram?

A. No, I probably sent it, sure, but I don't recall [2276] sending it.

Q. Do you recall discussing it with anyone else, sending a telegram to Dr. Lull about that suit?

A. No, I don't.

Q. Did you study the bylaws and constitution of the local society during the expulsion proceedings, Dr. Keyes?      A. I have forgotten.

Q. You have forgotten whether or not you studied them?      A. Yes.

Q. Are you familiar with the provisions now?

A. Well, if you ask me about any specific part, I might be, but to rattle them off to you, I can't, no.

Q. You don't know whether you had read them during the period or not?      A. (No response.)

Q. One thing, Dr. Keyes, at the meeting of the society held January 25th, 1951, I notice there is an entry in the minutes of that meeting to the effect that the minutes of certain previous meetings were read.

Referring to a paragraph in the minutes of the society meeting of January 21, 1951——

Mr. Kimball: I don't believe this witness was a trustee at that period and I don't know what knowledge he would have of it. This is a trustee [2277] meeting you are referring to.

Mr. McNichols: No, it is a meeting of the Walla Walla Valley Medical Society, Mr. Kimball.



(Testimony of Ralph S. Keyes.)

Mr. Kimball: Beg your pardon.

The Court: What date is that?

Mr. McNichols: It is January 25, 1951.

The Court: All right.

Q. (By Mr. McNichols): Do you recall, Dr. Keyes, the reading of the minutes referred to in this paragraph on the first page of the minutes?

A. I don't recall that, no.

Q. Well, then, subsequently, Dr. Keyes—incidentally, did you go to either of the hearings before the Judicial Council? A. No.

Q. Dr. Tompkins represented the society, I believe, at one of the hearings, didn't he?

A. Dr. Tompkins and Dr. Page at Los Angeles and I think Dr. Tompkins did in Chicago.

Q. And when you received the second word of the Judicial Council, the society reinstated Dr. Robinson and you so notified him?

A. As I recall.

Q. Did you work with Dr. Tompkins in preparing a suggested opinion for the AMA to enter in the rehearing? [2278] A. No, I did not.

Q. One thing, Dr. Keyes, were you present in court this morning when Dr. Kincaid testified?

A. Yes.

Q. Was your recollection of the events at the expulsion meeting in substantial accordance with his? A. What specific question, please?

Q. Well, he described briefly that Dr. Page had talked and Dr. Tompkins had talked and Dr. Cowan had talked.

(Testimony of Ralph S. Keyes.)

A. What did he say? Well, as I recall, it was about these three things, it was substantially correct, yes.

Mr. McNichols: I think that is all, Dr. Keyes.

Mr. Kimball: No questions.

The Court: That is all, then, Dr. Keyes. Dr. Keyes may be excused, I assume.

A. Thank you.

(Witness excused.) [2279]

\* \* \*

#### DEPOSITION OF SISTER BONOSA

“Q. State your full name and address.

“A. Sister Bonosa, St. Mary’s Hospital, Fifth and Poplar Streets, Walla Walla, Washington.

“Q. State the names and addresses of the officers, directors, agents, and physician members of committees governing the status of physicians on the staff of the hospital at present.

“A. LeGrand Anderson, M.D., President of the Medical Staff. [2280]

“John R. Cranor, M.D., Vice-President of the Medical Staff.

“Robert H. Schaeffer, M.D., Secretary of Executive Committee.

“Robert W. Jamison, M.D., Member of Executive Committee.

“Robert C. Beck, M.D., Member of Executive Committee.

(Deposition of Sister Bonosa.)

“Frederic Davis, M.D., Member of Executive Committee.

“Q. State the names and addresses of the officers, directors, agents and physician members of committees governing the status of physicians on the staff of the hospital on or about May 15, 1951.

“A. Merrill Smeltzer, M.D., President of the Medical Staff.

“George A. Falkner, M.D., Vice-President of the Medical Staff.

“Peter T. Brooks, M.D., Secretary of Executive Committee.

“Leroy O. Carlson, M.D., Member of Executive Committee.

“Ralph S. Keyes, M.D., Member of Executive Committee.

“Clifford D. Hogenson, M.D., Member of Executive Committee.

“Q. State the names and addresses of the officers, directors, agents and physician members of committees governing the [2281] status of physicians on the staff of the hospital on or about March 25th, 1952.

“A. Peter T. Brooks, M.D., President of the Medical Staff.

“E. O. King, M.D., Vice-President of the Medical Staff.

“John R. Cranor, M.D., Secretary of Executive Committee.

“Merrill Smeltzer, M.D., Member of Executive Committee.

(Deposition of Sister Bonosa.)

“William F. Holmes, M.D., Member of Executive Committee.

“George A. Falkner, M.D., Member of Executive Committee.

“Q. State what oral and/or written communication the officers and/or agents of the defendant corporation received from any officers, agents or members of the Walla Walla Valley Medical Society, Washington State Medical Association and American Medical Association relative to the status of the plaintiff as a member of the said professional societies.

“A. Letter dated May 25, 1951, from Leroy O. Carlson, M.D., Secretary, Walla Walla Valley Medical Society to Sister Superior, St. Mary's Hospital, Walla Walla, Washington, as follows:

“‘Dear Sister Superior:

“Please be advised that, as of May 22nd, 1951, Dr. Miles H. Robinson ceased to be a member of the Walla Walla Valley Medical Society and, as of the same date, ceased to be eligible for membership.’

“Q. What were the rules and regulations of the defendant with respect to the eligibility of physicians for its staff on or about May 15, 1951?

“A. The following is copied from the ‘Constitution and Bylaws’ of the Staff of St. Mary's Hospital, Walla Walla, Washington:

(Deposition of Sister Bonosa.)

“ ‘Article III—Membership

“ ‘Section 1. Requirements for membership on the medical staff shall be:

“ ‘1. United States citizenship.

“ ‘2. Qualification by law to practice medicine and surgery in the States of Washington and/or Oregon.

“ ‘3. Qualified for membership, or satisfactory application on file with the Walla Walla Valley Medical [2283] Society.

“ ‘4. Election to membership by the medical staff and approval by the hospital management.

“ ‘5. Approval by the Executive Committee.

“ ‘6. Practicing within the community or within reasonable distance of the hospital.’

“Q. When were the said rules and regulations adopted and put into effect?

“A. September 28, 1950.

“Q. What were the rules and regulations of the defendant with respect to the eligibility of physicians for its staff on or about March 25, 1952?

“A. Same as above set forth in answer to Interrogatory 6.

“Q. When were the said rules and regulations adopted and put into effect?

“A. Same as above set forth in answer to Interrogatory 7.

“Q. What are the rules and regulations of the defendant with respect to the eligibility of physicians for its staff at present? [2284]

(Deposition of Sister Bonosa.)

“A. Same as above set forth in answer to Interrogatory 6.

“Q. When were the said rules and regulations adopted and put into effect?

“A. Same as above set forth in answer to Interrogatory 7.

“Q. On the said three dates, to wit, May 15, 1951; March 25, 1952, and at present, what were and are the rules and regulations regarding reinstatement of a physician to the staff of the defendant corporation's hospital after suspension and/or expulsion?

“A. The following is copied from the ‘Constitution and Bylaws’ of the staff of St. Mary's Hospital, Walla Walla, Washington:

“ ‘Article III—Membership

“ ‘Section 5. Reinstatement:

“ ‘The procedure for reinstatement to membership on the staff shall be the same as in the case of original appointment, except in the case of approved leave of absence, a request for which has been submitted [2285] in writing and approved by the Executive Committee.’

“Q. Did the defendant receive notification of the plaintiff's reinstatement as a member in good standing of the Walla Walla Valley Medical Society, Washington State Medical Association, and American Medical Association, and, if so, when and in what form?

“A. Defendant, St. Mary's Hospital, received a copy of the following letter:

(Deposition of Sister Bonosa.)

“ ‘July 22nd, 1952.

“ ‘M. H. Robinson, M.D.

“ ‘Drumheller Building

“ ‘Walla Walla, Washington

“ ‘Dear Dr. Robinson:

“ ‘At a meeting of the Board of Trustees of the Walla Walla Valley Medical Society, convened the evening of July 21, 1952, the Board, acting on the decision of the Judiciary Council of the A.M.A., reinstated you to membership in the Walla Walla Valley Medical Society.

“ ‘Very truly yours,

“ ‘RALPH S. KEYES, M.D.,

“ ‘President.

“ ‘Copies

“ ‘1. Walla Walla General Hospital

“ ‘2. St. Mary’s Hospital.’

“Q. When the Walla Walla General Hospital on or about March 25, 1952, recognized the reversal of the expulsion of the plaintiff from membership in said professional societies, why did the defendant not similarly restore the plaintiff to its staff?

“A. Neither this affiant nor this defendant have any knowledge concerning any action taken by the Walla Walla General Hospital on or about March 25, 1952, concerning the plaintiff. On said date this affiant was not present in Walla Walla, Washington, nor connected with St. Mary’s Hospital in any capacity, but is informed and, therefore, believes that the then governing authority of the hospital

(Deposition of Sister Bonosa.)

Sister Joseph, did not consider it to be in the best interests of the hospital to restore plaintiff to said hospital's medical staff.

“Q. When, where, and in what manner was the decision made by the defendant not to [2287] reinstate the plaintiff as a member of its hospital staff?

“A. This affiant is not advised as to when, where, or in what manner a decision was made by the then administrator and governing authority of the hospital not to reinstate plaintiff as a member of the hospital staff, nor is this affiant able to state whether or not a formal decision as such was ever made by any persons in authority at that time in defendant's hospital.

“Q. Was the said decision made solely by the officers and agents of the defendant on its responsibility?

“A. This affiant is advised that it was on the sole responsibility of the then governing authority of the defendant hospital that no action was taken on the Plaintiff's letters of February 18, 1952, March 8, 1952, and May 6, 1952, addressed to St. Mary's Hospital, and on his not being reinstated.

“Q. What other persons, if any, participated in the said decision by the defendant [2288] corporation not to reinstate the plaintiff to its staff?

“A. This affiant is advised and believes that no other persons participated in the decision referred to in answer to Interrogatory No. 16.

“Q. Did the officers and agents of the defendant corporation consult with any members or officers of



(Deposition of Sister Bonosa.)

the said professional societies or any physicians generally relative to the status of the plaintiff in connection with his possible reinstatement as a member of the hospital staff?

“A. This affiant is advised and believes that the then Sister Superintendent informed the Executive Committee of the Hospital Staff in accordance with the provisions of Section 4(3) of the Constitution and Bylaws of the Staff of St. Mary’s Hospital that the reinstatement of plaintiff to membership on the staff would not be in the best interests of St. Mary’s Hospital and that he would not be readmitted. The officers and agents of [2289] defendant corporation did not consult with any members or officers of the said professional societies or any physicians generally relative to status of plaintiff in connection with his reinstatement as a member of the hospital staff.

“Q. What were the reasons that the defendant corporation refused to reinstate the plaintiff as a member of its staff?

“A. This interrogatory has been answered in Nos. 14 and 18 above.

“Q. During the last five years, what other physicians have been suspended or expelled from the staff of the defendant corporation’s hospital, and what were the reasons therefor?

“A. None.” [2290]

\* \* \*

Let the record show that this is the deposition taken of R. A. Benson, M.D., in this case, at 1309

Seventh Avenue, Seattle, Washington, October 22nd, 1955. (Reading):

DEPOSITION OF R. A. BENSON

“Q. Will you state your full name, please?

“A. R. A. Benson.

“Q. Where is your residence?

“A. Bremerton, Washington, 245 Fourth Street.

“Q. You are actively practicing medicine?

“A. I am, yes.

“Q. Where do you have your office?

“A. At the address given.

“Q. You are a member of the Washington State Medical Association?      A. I am, yes.

“Q. Do you belong to a medical service corporation, to a medical service bureau?

“A. I belong to Kitsap Medical Service Bureau.

“Q. In connection therewith do you have a contract with the medical service corporation?

“A. I do, yes.

“Q. That would be with the Kitsap County Medical Service Corporation?      A. That is right.

“Q. Are you now an officer of the Washington State Medical Society? [2292]

“A. No, I am a delegate of the Washington State Medical Association.

“Q. To the House of Delegates—

“A. Of the American Medical Association.

“Q. I don't believe you call it the House of Delegates?      A. Yes.

“Q. You do call it that?

(Deposition of R. A. Benson.)

“A. Yes, that is correct.

“Q. Were you an officer of the association in 1950 and 1952? A. I was.

“Q. What was your position?

“A. I was president of the state association. I believe it was in 1951 and 1952.

“Q. Were you ever president of the Washington State Medical Bureau? A. No, sir.

“Q. Have you ever held any position with the state bureau? A. No, sir.

“Q. Do you know the plaintiff in this case, Dr. Robinson? A. I do yes.

“Q. When did you first meet Dr. [2293] Robinson?

“A. I believe my first introduction to Dr. Robinson, to the best of my recollection, was at a hearing of the Judicial Council in Los Angeles, if my memory is correct.

“Q. Had you heard of him prior to that time?

“A. I had heard of him, yes.

“Q. In connection with what did you hear of Dr. Robinson?

“A. I had been the recipient of several pieces of mail wherein, as I recall, Dr. Robinson had set forth in these respective documents some of his problems.

“Q. Did you read those letters that were sent to you and pieces of mail?

“A. I examined them for context, yes.

“Q. Did you do anything as a result of reading them? A. I did not, no, sir.”

(Deposition of R. A. Benson.)

Mr. Sembower: I will now move to the next page, 5, line 18. (Reading continued):

“Q. Did you have a grievance committee in the state association at that time?

“A. As I recall, we did.

“Q. How was that grievance committee selected?

“Mr. Rosling: The membership, you [2294] mean?

“Mr. Sembower: Yes, the membership.

“A. The exact method of selection—I would have to refer to records to refresh my mind, but it was selected as stipulated in our constitution and bylaws at that time.

“Q. Wasn't it a fact that the grievance committee had just been formed in 1951 in the state association?

“A. It was a fairly new committee. It was formed somewhere along about that time. I wouldn't be positive as to the exact date.

“Q. Was it not a fact that Dr. Robinson's case was the first one to come before it?

“A. That I cannot answer.

“Q. You don't know of your own knowledge whether it was or not? A. No, I don't.

“Q. Would it be possible that it could have been? A. It could be possible.

“Q. Did you know as president of the state association of the disposition which the grievance committee made of Dr. Robinson's case? [2295]

“A. I presume I would have been on the assumption that the disposition was in keeping with

(Deposition of R. A. Benson.)

the directives that implemented the grievance committee in its action.

“Q. Did you assume that it was being handled according to the procedures that applied?

“A. That is correct.

“Q. Do you know how those procedures were developed?

“A. The procedures for the conduct of the grievance committee?

“Q. Of the grievance committee, yes.

“A. The development of the grievance committee—may I elaborate?

“Q. Do, please.

“A. —was an outcome of a recommendation that was made by the American Medical Association in an attempt to have some grassroot opportunity for the mediation of difficulties that might occur either between doctors themselves or between doctors and patients, and the American Medical Association encouraged that the component societies and state associations explore the possibility of establishing these [2296] committees. It was in keeping with that recommendation, which we felt was an excellent one, that we made a concerted effort to establish it.

“To do so—and again, the records would have to verify this—it is my recollection that we appointed a committee to draft the necessary machinery whereby this could be established, and in that manner it came into being.

“Q. Then the development of the local grievance

(Deposition of R. A. Benson.)

committees did not also flow in this general chain of development from the American Medical Association which led to the establishment of your state grievance committee?

“A. I believe it was a further expansion of that idea.

“Q. Do you remember in connection with that whether there was any consideration of the matter whether these committees should be secret, that is, not be known to the doctor, or whether the names of the members should be known to them? Was that ever given consideration? [2297]

“A. It was. I believe it was a controversial point whether it should be a known membership or whether it should be a hidden membership.

“Q. Did the state association have any policy with respect thereto?

“A. I don't believe there was a written policy. I believe that our state grievance committee's membership was entirely known to everybody concerned.

“Q. The local societies of the association have a charter from the state association, do they not?

“A. That is correct.

“Q. What do those charters purport to be?

“A. Not having seen one I doubt that I am capable of answering. I presume it is the authority or the authorization for a component society to be formulated. That is a presumption.

“Q. Now, Doctor, you attended the meeting of the Judicial Council in Los Angeles in the late

(Deposition of R. A. Benson.)

fall of 1951. How did you happen to attend that meeting?

“A. Because of my connection with the [2298] state association.

“Q. Did somebody ask you to attend?

“A. That I do not recall. I felt it was my responsibility, certainly, being an officer of the state association. Beyond that I do not recall that I was commissioned particularly.

“Q. Do you remember who else attended from the state association? I realize that may be difficult, but if you just remember generally who may have attended.

“A. I will recite my recollection of the meeting.

“Q. That will save us a little time if you can kind of paint in what you do remember seeing there and so forth.

“A. Some information was given me prior to my departure for Los Angeles which was, I believe, my first factual information regarding the case per se. As to the membership or who was present at the meeting, I would be unable to tell you at this time.

“Q. How long in advance of the meeting did you know that it was going to be held, if you [2299] recall?      A. I do not recall.

“Q. Did it seem to you as if the notice was short?      A. That also I do not recall.

“Q. The reason I ask is because that the local itself, as to my understanding, objected later that it did not receive adequate notice. I wondered if the state society felt the same way?

(Deposition of R. A. Benson.)

“A. If so, it escapes my recollection.

“Q. Who carried the ball in the meeting for what we might call the prosecution of Dr. Robinson, do you recall?

“A. I don't recall there was a prosecution. My recollection was that it was a Judicial Council hearing.

“Q. Were there statements presented which gave the viewpoint of the Washington State Society and the local society?

“A. If so, on interrogation.

“Q. But no prepared statements were given?

“A. Not to my recollection.

“Q. Were you questioned as to the particulars?

“A. I may have been. [2300]

“Q. Do you remember what you said?

“A. No, I don't.

“Q. Doctor, I have in my hand here a copy of what purports to be a letter from Caniffe, whom I assume is Dr. Caniffe, erstwhile chairman of the Judicial Council of the American Medical Association, addressed to Dr. Ross D. Wright, dated November 15, 1951, saying, ‘This is to inform that Dr. Miles Robinson is prosecuting his appeal from the Judicial Council of the American Medical Association, from the decision of the Washington State Medical Association, expelling him from membership. I am instructing Dr. Robinson to prepare a brief, sending copies for the members of the Judicial Council, and also one copy for the Washington State Medical Association. Would you please send



(Deposition of R. A. Benson.)

us six copies of your responding brief immediately after receiving the appellant's brief and send additional copies to Dr. Robinson.' "

"Did Dr. Wright ever speak to you about receiving this letter from Dr. Caniffe? [2301]

"A. He may have. I do not recall.

"Q. Why would Dr. Wright receive such a letter from Dr. Caniffe?

"A. It is my recollection that at that time Dr. Wright was a delegate from Washington to the American Medical Association, and possibly through that relationship the letter was directed to him.

"Q. Did he have any official position in the state association that would place him in charge of this activity of preparing the briefs and so forth?

"A. Not to my knowledge.

"Q. He was not even on the grievance committee, was he?

"A. That I cannot answer. I do not know.

"Q. I have what purports to be a copy of a letter from Dr. Miles H. Robinson, dated November 24th, to the Washington State Medical Association, saying, 'Dear Sir: Dr. Caniffe, chairman of the Judicial Council of the American Medical Association, in his letter to me of November 15, 1951, asked me to send you the enclosed outline, which I have prepared, summarizing [2302] the improper and illegal procedure used by various parties, leading to and causing my expulsion from the local medical society.'

(Deposition of R. A. Benson.)

“Was this letter ever brought to your attention so far as you recall?      A. Signed by whom?”

“Q. By Dr. Robinson.

“A. And directed to whom?”

“Q. ‘Dear Sirs’—not to any particular person.

“A. And your question, was it ever brought to my attention?”

“Q. Ever brought to your attention.

“A. It may have been but I don’t recall it.

“Q. To whom would this normally go?”

“A. It would go to our executive secretary and then be presumably presented to the executive committee.

“Q. That would have been, of course, Mr. Neill, is that correct?”

“A. The executive secretary would be Mr. Neill.

“Q. Do you know whether this was presented to the executive committee by him?”

“A. If Mr. Neill received it I am quite certain that he saw that it was properly channeled. [2303]

“Q. We have a copy of a letter purporting to be a copy of a letter from Mr. Rosling to Dr. Caniffe, dated November 20, 1951, referring to the Wright letter that I mentioned, dated November 15, 1951. I ask you if you ever saw this letter before?”

“A. I am not certain that I saw the letter. I notice, however, there is a copy directed to the state medical association, and it is a reasonable assumption that it may have received my attention. How-

(Deposition of R. A. Benson.)

ever, I am not impressed with its significance at the present time.

“Q. Now, I have before me here what purports to be a photostatic copy of minutes of the Walla Walla Valley Medical Society held at the Marcus Whitman Hotel, a meeting of the trustees of that society, November 28, 1951. It states, ‘The executive secretary reported that telephone calls had been received Wednesday, November 28, from the Washington State Medical Association from a Dr. Caniffe. We assume that may be Dr. Caniffe in New York. The name and the location are as understood by the executive [2304] secretary from the report of the telephone operator and from Mr. Rosling in Tacoma. The calls were all relative to a brief that had been filed with the Judicial Council of the American Medical Association by Dr. Miles Robinson, and that inquiry was being made as to why the Walla Walla Medical Society had not filed with the Judicial Council an answer to the Robinson brief, and whether or not the society was being represented at the American Medical Association meeting in Los Angeles, where a hearing was to be held by the Judicial Council on the Robinson brief.’

“Then, complaining further, that there was shortness of time.

“Do you know, Doctor, why the Walla Walla Medical Society would have received such a short notice of that meeting down there in view of these letters we have here?

(Deposition of R. A. Benson.)

“A. No, I cannot answer that. The Judicial Council usually meets at the time of either the annual session or at the [2305] time of the interim session, and those dates are pretty well fixed. Just when the appeal was filed, I do not know, and whether it was because of that shortness of time that existed, if so, I cannot answer.

“Q. You attended the hearing in Los Angeles?

“A. I did, yes.

“Q. Do you remember what day of the week it fell on?

“A. I do not know positively, but I would hazard an opinion that it was on a Sunday.

“Q. That was our opinion. In fact, I believe that is it.

“Now, Doctor, when you attended the meetings would you say in your observation there that the Washington State Society was adequately prepared to answer the questions directed to its representative by the chairman of the council? This is not a rhetorical question. I am just asking what your reaction is.

“I will tell you what I am driving at exactly. You see, later on it was held that the proceeding was imperfect, and we [2306] were just wondering what your reaction was about the proceeding as you observed it?

“A. Well, I do not recall that I was particularly impressed in that regard. I do recall going through a welter of material prior to the hearing. Whether the press of time was significant escapes me now.

(Deposition of R. A. Benson.)

“Q. For instance, did the Washington State Society have a copy of its own constitution and bylaws to supply the hearing officers?

“A. That I do not know.

“Q. Was there a reporter present?

“A. That I cannot answer.

“Q. Did you feel, having attended the meetings, that the position of the society was adequately presented?

“A. It was my first attendance at a meeting of the Judicial Council. I know I felt the definite weight and responsibility of the state association as it pertained to its connection in this instance, feeling that we had in every sense abided by our rules, our constitution, and it was my [2307] feeling and responsibility that I wanted to insist that we had complied with the constitution, bylaws, and rules that I was pledged to uphold in my connection with the state association.

“Q. Did you feel it would be a serious reflection on the association if it were overruled by the Judicial Council?

“A. I took enough interest in the state association to be very zealous that it was following its rules to the utmost.

“Q. You felt that it would be a reflection on the association, did you not?

“A. If we had in any sense, if we were implicated as not having done so.

“Q. In fact, that is the way it turned out,

(Deposition of R. A. Benson.)

wasn't it, that the council held that the association didn't follow the procedure, was not that the case?

“Mr. Rosling: Before the doctor answers the question, he should be permitted to read the opinion of the Judicial Council.

“A. I have forgotten the opinion of the Judicial Council. [2308]

“Mr. Sembower: Has he never seen the opinion?

“Mr. Rosling: I assumed he has.

“The Witness: I have, but it has been a long time ago.

“Mr. Sembower: Well, we can supply that, of course.

“Q. (By Mr. Sembower): As a matter of fact, the Judicial Council did direct ultimately Dr. Robinson's reinstatement, did it not?

“A. I believe so, and it is my further recollection that they took exception with the procedure of the state association.

“Q. Again, I want to be perfectly frank with you, as it is one of the things that perplexed us recently when we took a deposition of Dr. Caniffe in New York, and that was his insistence during the deposition that Dr. Robinson should have been held in status quo and his membership not severed until the case, until his last appeal had been exhausted before the American Medical Association.

“What is your knowledge of the rules as they exist in the Washington State at [2309] this time relative to that question?

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“Mr. Rosling: You mean as to the status of the rules now?”

“Mr. Sembower: The status of the rule then.

“Mr. Rosling: Yes.

“A. Well, the action that was taken by the Walla Walla Valley Medical Society, I cannot vouch for at this time. I can say, however, that I believe, and to the best of my knowledge, that whatever action was taken by the Washington State Medical Association was in keeping with our rules and regulations for the conduct of the grievance committee as they existed at that time. I believe they have been subsequently changed.

“Q. In what manner do you believe they have been changed?”

“A. One of the bones of contention that we had difficulty in establishing was the question of the position of the board of trustees of the state association. Our position was established in good faith in the regard that we did not feel that any [2310] subservient committee should have complete authority beyond the cognizance, consent, and approval of the board of trustees, which, according to our constitution, receives its authority in turn from the House of Delegates and acts for the House of Delegates. Because of that basic desire of fairness and retaining the opportunity to screen what subservient committees would do, any action that was taken would have to be subject to the approval of the board of trustees. That resulted in a contention that thereby the state association had disqual-

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ified itself in the conduct of any disciplinary problems. I believe as a result of that we made some changes. I cannot be certain, but that is my recollection.

“Q. They would be changes directed toward preserving a doctor’s status until his case was finally disposed of? A. That I do not recall.

“Q. Dr. Caniffe said definitely—implies, I should say, quite definitely—that had the Judicial Council known that Dr. [2311] Robinson was in suspense, actually without hospital privileges, and not an active member, that it might have acted sooner. Do you think that Dr. Caniffe should have known that he was without his hospital privileges and without membership in the society?

“A. At what time?

“Q. At the time the Robinson case was pending?

“A. At the time of the hearing in Los Angeles?

“Q. Yes, and subsequent thereto—you see, it was not finally disposed of until the following summer.

“A. I presume that he could have found out by interrogation.

“Q. You don’t know of your own knowledge that he did know? A. No.

“Q. Subsequent to the Los Angeles hearing—let me ask you—did you make any statement at Los Angeles? There was no stenographic record kept there, Doctor, so we just have to rely on what recollection anyone has.

“A. I believe I was subjected to interrogation



(Deposition of R. A. Benson.)

by [2312] Dr. Caniffe. The context of it I could not give you. I don't recall.

“Q. Did you have any conversation there at Los Angeles with representatives of the Walla Walla society about Dr. Robinson's case?

“A. I presume so. I am not certain who the representative from Walla Walla County was at that hearing. However, being that it was a matter of mutual concern, I assumed that there was conversation.

“Q. Do you remember the issues involved in Dr. Robinson's expulsion?

“A. Not particularly—it seems to me there were two cases.

“Q. Yes.

“A. Actually, the hearings that I attended had nothing to do with the facts that were associated with his controversy in Walla Walla County. My connection was entirely in connection with the procedural aspect of the conduct of the state association, and it was our contention that we had, to the best of our ability, conformed with our existing rules, regulations, constitution [2313] and bylaws as they existed at that time, and which was a matter of common information to all members of the state association and its component societies.

“Q. Did the local society members ever discuss with you the fact that Dr. Robinson had withdrawn from the medical bureau there?

“A. Not to my recollection; if so, it was not of concern to me.

“Q. Did they tell you whether he was a trouble-

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maker or whether he was a nuisance or anything else of that kind?

“A. I was never concerned about Dr. Robinson’s personal behavior.

“Q. Did you ever have any conversation with a Dr. Pratt from Walla Walla?

“A. Not to my recollection.

“Q. I will ask you this to see if it refreshes your recollection: Did Dr. Pratt ever tell you that he thought that Dr. Robinson was demented?

“A. I don’t know that anybody has told me that.

“Q. Do you remember anybody ever saying that to you?      A. No, sir. [2314]

“Q. Of course, you don’t remember talking to Dr. Pratt at all.

“I will ask you this one other thing to see if it refreshes your recollection—you may not have any recollection—but do you ever remember Dr. Pratt suggesting that he might get in touch with Dr. Robinson’s father about his conduct?

“A. No, sir.

“Q. Well, then, after the Los Angeles hearing, motions were made for the matter to be reopened. Do you remember any discussion about that with you?

“A. I don’t recall of any specific instances of discussion. I do recall that on various occasions at the executive meetings of the state association the status of Dr. Robinson’s case was given us for information, all of which is a matter of record.

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“Q. Were you aware during this period between the close of the hearing in Los Angeles and the rendering of the decision by the Judicial Council, or during the reinstatement of Dr. Robinson, of efforts on the [2315] part of Dr. Robinson to have that decision recognized by the Washington State society and the Walla Walla society?

“A. Was I aware of his efforts?

“Q. Yes, that he was trying to get the decision of the Judicial Council implemented, carried out and be reinstated?

“A. At that time I do not recall, no, sir.

“Q. You see, there was a period of bungling there where the decision sent out by the Judicial Council was in a form that was not recognized by the local societies. They were not on a letterhead, and so on. One was a telegram. This went on for about five months.

“You were not aware during that time of that period?

“A. I may have been aware at that time. However, with the multitude of diversionary responsibilities that I was confronted with at the time as president of the association, this was another instance that now does not come to my recollection.

“Q. I will show you, Doctor, a copy of a letter written to Dr. Edward R. Caniffe, [2316] dated February 21, 1952, by Ralph W. Stevens, M.D., chairman of the Walla Walla Valley Medical Society grievance committee, and showing carbon

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copies marked for Dr. Klein and yourself, and I will ask you if you recall seeing this letter?

“A. Yes, I think I recall having seen this letter.

“Q. What did you do after you received a copy of that letter? A. What did I do?

“Q. Yes, did you take any action after receiving a copy of that letter?

“A. Not to my recollection—it was sent to me for information.

“Q. Dr. Benson, isn't it an extremely damaging thing to a doctor to be suspended from his membership and his hospital associations?

“A. I think it is.

“Q. Shouldn't that be a matter of extreme concern for the association when a doctor is in such a predicament, so long as the matter is still alive?

“A. The authority lies in the county medical society, and they have the power to [2317] discipline, and the action has to be taken there. The state association, which was my responsibility, was acting in the respect of the state organization of the component societies.

“Q. In your tenure as president were there any others that were expelled from membership in the state association other than Dr. Robinson?

“Mr. Rosling: I object to the question because the state has no power of expulsion from membership.

“A. That is correct.

“Q. Well, let me ask about that. Isn't one of the

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criteria for membership in the state association membership in the local association?

“A. That is correct.

“Q. Now, to follow the syllogism out, if one is expelled from membership in the local association, is he not then expelled from membership in the state association?

“A. He has to have a membership in good standing in the county society to be a member in good standing in the state [2318] association.

“Q. Then the action of the county society would have the power of life and death over the member in the state association, would it not?

“A. But that membership in the state association does not prevent him, or his failure to maintain membership in the state association does not prevent him from his ability to practice medicine in his own community.

“Q. But his membership in the local association would, would it not?

“A. It could as far as hospital privileges are concerned.

“Q. Wouldn't it follow then that his membership in the state association would be part and parcel of the same thing? A. In what regard?

“Q. Well, I mean the state association has noted that he has been suspended from membership on the roll as a result of the local association roll.

“A. But that is the prerogative of the local society. [2319]

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“Q. Why, then, do you operate your grievance committee at all?

“A. As a court of appeals from the county societies.

“Q. Then you are concerned about that?

“A. Concerned about what?

“Q. About suspension and expulsion from local societies?

“A. If one of the members of a local society sees fit to appeal, yes.

“Q. Then you would take an interest in it. How many of those appeals have you had? How many of those appeals did you have while you were president?

“A. To my recollection that was the only one.

“Q. Well, Dr. Benson, why then would you not have taken extraordinary interest in this matter?

“A. An interest in the individual or in the action of the county society?

“Q. Both. A. I think we did.

“Q. Did you take concern in the individual?

“A. I would say we did in the respect that we made every effort to see that the rules [2320] and regulations as set forth in defense of an individual as propounded by the state association were adhered to.

“Q. But the Judicial Council didn't say that, did it?

“A. Again, I would want to refer to the decision of the Judicial Council.

“Q. Let's get a copy of that decision. I hand you

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here a copy of a decision of the Judicial Council. That copy was received by Dr. Robinson on March 29, 1952. It doesn't bear a date itself, but it does bear the certification of George H. Lull, secretary, as a true copy.

“Mr. Rosling: That is the decision following the rehearing, and I will hand to the doctor a copy of it.

“Mr. Sembower: No, it is not. It could not be. This is the first decision.

“Mr. Rosling: Well, the first decision was only a wire and that is all.

“Mr. Sembower: No, there is this copy here and then there is a second one after the rehearing.

“Mr. Rosling: What date did it come [2321] out?

“Mr. Sembower: The second one was July 15.

“The Witness: What was the question?

“Q. (By Mr. Sembower): The question was that the Judicial Council, however, did not believe that the proper procedure was followed, did it?

“Before you answer that question, may I ask if you have ever seen this before?

“A. I believe so—yes, I recall this.

“Mr. Sembower: Mr. Reporter, read my last question to the doctor.

“(Question read as follows: ‘The Judicial Council, however, did not believe that the proper procedure was followed, did it?’)

“The Witness: That certainly is what they have intimated in this ruling.

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“Q. (By Mr. Sembower): Well, now, the Judicial Council would have the last say on that question, would it not?

“A. However, our contention was that our procedure was in absolute keeping with the existing rules for the conduct of a [2322] grievance committee as we had established them.

“Q. How does that jibe with this ruling of the Judicial Council?

“A. As I attempted to explain that a little while ago, I stated in our original formation of the grievance committee we had provided for the board of trustees to approve the action of the grievance committee, which was the point that this decision took exception to. However, that procedure was the one that was in effect and was binding upon all members of the state association at that time.

“Q. Well, as matters now stand, does a doctor who is in the exact position that Dr. Robinson was, expelled from membership in a local society, now ousted from membership during the pendency of his appeal?

“Mr. Rosling: You mean as of today?

“Mr. Sembower: Yes, as of today.

“Q. (Continuing): Or does the membership continue uninterrupted until the final disposition of the appeal? [2323]

“A. I believe our constitution would clarify that.

“Q. But you don't know?

“A. I would want to refer to the constitution. I



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believe that the constitution will definitely answer that.

“Q. Let me ask you this: Do you not believe a person is innocent until proven guilty?”

“A. I do.

“Q. Wouldn't that indicate that he should continue in status quo until his last appeal is exhausted?”

“A. It is my belief that our constitution provided for that.

“Q. But that did not happen in Dr. Robinson's case, did it?”

“A. As far as the action of the Walla Walla County Society is concerned?”

“Q. Yes.

“A. May I answer from the constitution and by-laws of the Washington State Medical Association, dated 1951, with a current revision—the current revision, an amendment to Section 4, limitation, ‘However, the disciplinary action voted [2324] by the Society shall be suspended during the pendency of such appeal or appeals or until the time for such appeals shall have elapsed, if no appeal is taken.’ That is our existing rule.

“Q. That is a pasted over leaf that you are reading from?”

“A. That is right. The original one which this amended is as follows: ‘However, the disciplinary action voted by the Society shall remain in full force and effect during the pendency of such appeal or appeals.’”

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“Q. When was that change made?

“A. The exact date I cannot give you.

“Q. By whom was it made?

“A. It was made by the House of Delegates of the Washington State Medical Association.

“Q. Dr. Benson, I take it that you believe in the desirability of the medical bureau and service corporation plan?      A. I do.

“Q. Would you be seriously concerned over any attack which was made on that plan?

“A. If it were unjustifiable. [2325]

“Q. Were you aware that Dr. Robinson was making direct attack on that plan in his correspondence and writing?      A. I was not.

“Q. Would that have influenced your attitude towards his case, if you had been aware of that?

“A. My interest in his case was entirely in the respect of the fairness of the action of the state association in fulfilling its obligation to its constitution and bylaws in deference to the membership. That was my pledge to the state association.”

Mr. Sembower: I now jump to the next page, 30, line 15.

Mr. Rosling: Line 13 of 30?

Mr. Sembower: Line 15 on 30.

Mr. Rosling: Go ahead.

(Reading continued.)

“Q. Now, after the Los Angeles meeting, who talked to you? Did anybody talk to you about seeking a rehearing?      A. That I do not recall.

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“Q. Did you ever have any conversation [2326] with Dr. Klein of San Francisco with reference to a rehearing?

“A. Well, I have had conversations with Dr. Klein. Whether it was in connection with a rehearing I am unable to state.

“Q. Dr. Benson, this is not going on interminably, as we are approaching a windup here. I don't want you to get anxious about this. I am referring to the minutes of the monthly meeting of the membership of the Walla Walla Valley Medical Society, held at St. Mary's Hospital February 28, 1952. We find a passage here, 'Dr. Stevens explained that he had written to Dr. Benson relative to the Robinson case and outlined the answers he had received by telephone from Dr. Benson as to the position and action the local society should take in the matter. The question was then extensively discussed by Drs. Pratt and Page. Following this discussion, Dr. Stevens moved, seconded by Drs. Carlson and Lange, that the action taken by the board of trustees in their meeting of February 12, 1952, tabling all action [2327] relative to the case until the information requested by Dr. Keyes is received, be approved. Motion carried.'

“Do you remember Dr. Stevens getting in touch with you on this matter?

“A. I have a recollection of talking to him over the telephone.

“Q. Do you remember what you told him?

“A. No, I don't.

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“Q. Did you tell him to have the matter tabled?

“A. I don’t recall.

“Q. Isn’t it possible that you would have seen this opinion that I just read prior to this date, February 28?

“Well, I want to revise that because the date that appears was subsequent. It is possible that you may have known it was on the way, however, is it not, because there was a telegram?

“A. Well, that is a presumption.

“Mr. Rosling: You mean that Dr. Benson knew that the opinion was coming from Chicago?

“Mr. Sembower: Yes, but not the text of it because there was a telegram, the [2328] date of which was February 1st.

“Mr. Rosling: You are asking the doctor if he had knowledge in advance of the opinion that the opinion was coming?

“Mr. Sembower: That is right.

“Mr. Rosling: Did you so understand the question?

“The Witness: I had no knowledge of what was coming.

“Q. (By Mr. Sembower): You had no knowledge? A. No.

“Q. It is possible that you might have told them to table it, is that correct?

“A. I have no recollection of what my suggestion was. However, I think it should be clear that I had no authority as far as the action of the Walla Walla County Society, and whatever suggestion

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that may have been made could only be construed as a suggestion.

“Q. Dr. Benson, I have here a copy of what purports to be a letter written by Bruce Zimmerman, M.D., Secretary-Treasurer of the Washington State Medical Association, to Mr. Rosling, dated April 10, [2329] 1952, and it states, ‘On April 9, 1952, at the April 9, 1952, meeting of the executive committee of this association, following action was taken relative to the American Medical Association Judicial Council decision in the Dr. Miles H. Robinson matter, ‘legal counsel being instructed to prepare a critical analysis of the communications concerning the Judicial Council decision for the president’s signature to be approved by the board of trustees, and that the Walla Walla Valley Medical Society be informed this matter has been taken under advisement and will be submitted to the board of trustees for its consideration.

“ “ “Dr. Benson intimated last evening that he wished to present this analysis to Dr. Klein when they met on the 16th. With this in mind, am enclosing a copy of the ‘decision.’ Doubtless you will discuss it with Dr. Benson, and send it to his Bremerton office to same time.” ’

“Now, I wonder what that intimation was, that is, I want to ask first if you [2330] recall what you did say to Dr. Zimmerman along these lines that constituted this intimation?

“A. Relative to discussing it with Dr. Klein?

“Q. Yes, and asking for this memorandum.

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“A. What I said to Dr. Zimmerman?”

“Q. Did you ask Dr. Zimmerman to have Mr. Rosling prepare this memorandum about the case?”

“Mr. Rosling: The letter recites that the executive committee requested it.

“Mr. Sembower: That is true, but it says that Dr. Benson intimated last evening that he wished to present this analysis to Dr. Klein.

“The Witness: What is your question?”

“Q. (By Mr. Sembower): Do you remember the discussion about this analysis? A. No.

“Q. And the trustees? A. No.

“Q. Did you intimate that you wanted to present this analysis to Dr. Klein when you saw him on the 16th of April, 1952?”

“A. Well, it so states. [2331]

“Q. Did you get the analysis?”

“A. That I do not recall.

“Q. Do you remember discussing it with Dr. Klein?”

“A. I may have, but I could not recount any discussion.

“Q. I get the impression, Dr. Benson, at this time, that you had a much more active role in that than appears from our questions and answers today in light of your recollection. Is that true?”

“A. Well, as I stated before, I had a very definite stake in this in the regard that I was pledged to the upholding of the constitution and bylaws of the state association in my official position as president of the association. I guarded that responsi-

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bility very highly, and in deference to that I was making every effort to see, too, that we were abiding by the rules that had been set forth for the conduct of the state association.

“Q. Did you also feel that the Robinson case might be a great reflection upon the state association? [2332]

“A. I feel that any violation of an existing rule or regulation could be a reflection and I was guarding against there being a violation.

“Q. But you don't ever remember discussing this with Dr. Klein?

“A. I may have, but if so, the gist of our conversation certainly escapes me.

“Q. I have here a copy of a letter—it doesn't bear any signature—it is our information from some of these depositions that this was written by Miss Jane Lawrence. It is dated April 17th, 1952, addressed to Dr. Benson, and states, ‘Dr. Tompkins of Walla Walla called yesterday to acknowledge receipt of data supplied him from this office with which he would prepare a brief on that society's petition for a rehearing of the Robinson matter. He stated that he was preparing the brief with the cooperation of the society's counsel, Mr. Kimball, who has full knowledge of the case from the outset. The petition will be heard by the Judicial Council on April [2333] 25th in Chicago, he said. I gathered from his conversation that the society's brief would attempt to defend procedures followed in the society's hearing of the case. Dr. Tompkins will fur-

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nish the state office with a copy of his brief and supporting documents. Mr. Neill discussed with me what had transpired at San Francisco and authorized me to tell Dr. Tompkins the matter had been discussed informally and unofficially with Dr. Klein, and that the situation did not look too bad. I told Dr. Tompkins you might request Mr. Rosling to attend the rehearing of the case if the society's petition is granted, to which the former replied, that is quite all right with us.

“ ‘You and Mr. Rosling will be sent a copy of the brief as soon as it is received here.’

“Do you remember receiving that letter?

“A. No, I don't.

“Q. Now, this relates again to [2334] conversations in San Francisco. Did you participate in those conversations with Dr. Klein? A. I may have.

“Q. Do you have any idea who else might have?

“A. If there were conversations they were entirely personal for information, guidance, and having no bearing, as far as any action was concerned. I think we are all entitled to advice which we obtain through conversation.

“Q. It says here, and I wonder if you have any idea to what this refers, ‘The matter has been discussed informally and unofficially with Dr. Klein, and that the situation did not look too bad.’ Do you have any idea what that refers to?

“A. I do not.

“Q. Had Dr. Klein given any intimation to you or to anybody that you know of that a rehearing



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would be granted?           A. No.

“Q. Well, now, we come to the rehearing which was held in Chicago, about which we have been talking so much today, in the spring of 1952. In attendance we find from the [2335] minutes that were presented by Dr. Lull, the names of Dr. Benson, Dr. Zeke, Dr. Jared, Mr. Neill, Dr. Tompkins, Mr. Winikoff, and Dr. Greger.

“I would like to ask if you remember attending that session?           A. I do, yes.

“Q. Do you remember about when it was held and where?

“A. My recollection is that it was held immediately preceding the American Medical Association convention and in the Palmer House. That is my recollection.

“Q. Now, do you remember these other persons being present—Zeke, Jared, Neill, Tompkins, Winikoff and Greger?

“A. Yes, I think they were all there. I would not be able to have given you the membership unless it had been stated, but I believe they were all there.

“Q. Did you have any discussion with the Walla Walla people before you went down to this?

“A. Well, I think Dr. Tompkins, being very much concerned about this hearing, may [2336] have spoken to me about it.

“Q. Do you remember what he said to you and what you said to him?           A. No, sir.

“Q. You said that he was very much concerned

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about it. How did you know that he was so concerned?

“A. It is my recollection that he made the trip back there solely for the purpose of appearing before the Judicial Council.

“Q. Did he appear in your presence?

“A. I would presume so. It was at the hearing. I was there through all of it.

“Q. Did you make a statement to the Judicial Council?      A. I believe I was interrogated.

“Q. Do you remember what you said?

“A. No.

“Q. We will have the transcript on that, I assume. We don't have it, but it is being hunted. The transcript isn't available.

“How soon after that did you learn about the decision of the Judicial Council, the second [2337] decision?      A. I cannot answer that, either.

“Q. Did you make any effort to find out what that decision was?

“A. Yes, we would have been very anxious to have known the decision immediately. However, to the best of my recollection it was not forthcoming, and when it was given, I am unable to tell you.

“Q. Did you learn about it on June 15th?

“A. That I cannot answer. I do not know.

“Q. You say you would have liked very much to have learned what the decision was. For what purpose would you have liked to have found out?

“A. I think we are all anxious to know the out-

(Deposition of R. A. Benson.)

come of any controversial issue just through the element of human curiosity, if for no other reason.

“Q. Would there have been nothing more than curiosity which would have caused you to want to find out?           A. Yes.

“Q. What would it have been?

“A. My concern regarding the action of the state association. [2338]

“Q. Anything else?

“A. Not that I recall.

“Q. Dr. Benson, would you have been concerned about Dr. Robinson and his career and his practice?

“A. I am concerned about anybody who is fraught with a problem to be certain that he is given fair justice, and if we have tried to comply with the necessary requirements for dispensing that justice, there is a certain absolution that is accorded me in that knowledge.

“Q. If it turns out that in the decision of the highest tribunal in the American Medical Association that this man was wrongfully expelled and outside the membership for more than a year, wouldn't that be an extremely serious matter for a reinstated member of your society?

“A. I think you should be aware of the fact that I had no knowledge of the reasons for Dr. Robinson's difficulties. My concern was not from the standpoint of the factual elements that were involved, but from the standpoint of the [2339] correctness of the procedure that was utilized in deter-

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mining whether the procedure was properly handled.

“Q. You have examined that letter from Dr. Stevens that told you something about this situation, have you not? A. This (indicating)?

“Q. Yes. I believe that even calls Dr. Robinson a blackmailer there.

“A. I don't know if I made my point clear in the regard that I had not weighed the evidence that had been elicited at the time of the hearing in Walla Walla. That, presumably, was the responsibility of the local society to determine whether or not the violation had been perpetrated. It was my concern to be assured that the procedure that had been followed in the subsequent events was proper and correct. That was my concern.

“Q. Now, you have found that it was improper and incorrect, have you not?

“A. Not as far as our existing rule for the conduct of the grievance committee was concerned. We followed those completely. [2340]

“Q. You mean notwithstanding what the Judicial Council said?

“A. Notwithstanding what the Judicial Council said, because as I showed you from our constitution and bylaws there was a subsequent change that was made in conformity with the action of the Judicial Council.

“Q. It was just Dr. Miles Robinson's misfortune that he came along before that happened, is that correct?

(Deposition of R. A. Benson.)

“A. I would not place anybody in the situation of misfortune by virtue of chronology.

“Q. Well, have you ever had a disciplinary action brought against you?

“A. I have been disciplined all my life.

“Q. Have you ever had any charges filed before you in your medical society?

“A. In my medical society?

“Q. Yes.

“A. For my society’s disciplinary action?

“Q. No, action asking that you be disciplined?

“A. No, sir. [2341]

“Q. You never had any experience being on the receiving end of a thing like that?

“A. I have been disciplined all my life.”

Mr. Sembower: That is all.

I ask Mrs. Ruth Robinson to take the stand, please.

### RUTH JOHLIN ROBINSON

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

#### Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Ruth Johlin Robinson.

Q. And what is your address, Mrs. Robinson?

A. 1306 Dulaney Valley Road, Towson, Maryland.

Q. And your occupation?           A. Housewife.

(Testimony of Ruth Johlin Robinson.)

Q. You are related to the plaintiff in this action, Dr. Miles H. Robinson? A. Yes.

Q. And what is your relationship?

A. I am his wife.

Q. When were you married to Dr. Miles Robinson? A. On December 26, 1934. [2342]

Q. Mrs. Robinson, have you been generally conversant with the facts of Dr. Miles Robinson's practice as a physician? A. Yes.

Q. Have you assisted him on occasion in his laboratory? A. No.

Q. What has been the extent of your knowledge of his practice as a physician?

A. Well, I was married when he was a freshman in medical school and I have been with him ever since.

Q. Mrs. Robinson, directing your attention to a certain Sunday morning on October the 8th, 1950, were you and Dr. Robinson at home together on that morning? A. Yes.

Q. Do you recall whether there were any incoming or outgoing phone calls on that Sunday morning? A. Yes.

Q. How many were there?

A. One outgoing and one incoming.

Q. Were there any other phone calls that you recall? A. No, not that I recall.

Q. Which was the first telephone that you recall, Mrs. Robinson? A. An outgoing call.

Q. And what was that telephone call? [2343]

A. That was a call made by my husband.

(Testimony of Ruth Johlin Robinson.)

Q. To whom did he make the call?

A. To Mr. Tom Brooks.

Q. Approximately what time, if you recall, did he place that call?

A. Oh, it was fairly early in the morning.

Q. Were you present, Mrs. Robinson, during that telephone call?           A. Yes.

Q. What was the gist of the conversation which you heard from Dr. Robinson's end of the telephone?

A. It was a medical discussion about a contagious disease.

Q. And how long did the conversation take place, approximately?

A. Oh, between fifteen and twenty minutes.

Q. Do you recall what the medical discussion concerned, generally?

A. Yes, a social disease that was contagious.

Q. Did you hear in that telephone conversation any mention of a letter?           A. Not that I recall.

Q. What was the demeanor of your husband as he carried on that conversation, if you recall?

A. He was explaining something.

Q. Did he seem excited or upset? [2344]

A. No, no. Later, at one point, he was exasperated.

Q. What was the point at which he was exasperated?

A. Well, he said, "I didn't use her as a guinea pig," or something like that.

(Testimony of Ruth Johlin Robinson.)

Q. Do you remember anything else in general about the conversation that you heard?

A. Well, I think I heard him saying, "Well, I have something from the state health department and the local health department to prove that you have this disease."

Q. Mrs. Robinson, then on the telephone conversation to which you referred, do you remember approximately when that call was received?

A. It was later in the morning.

Q. Who answered the telephone on that occasion?           A. I did.

Q. Did you recognize the voice of the person on the other end of the telephone?

A. Well, English accent.

Q. Have you since heard that voice on various occasions?

A. Yes, many times now here in the courtroom.

Q. And whose voice was that?

A. Mr. Tom Brooks' voice.

Q. What, in general, Mrs. Robinson, was the gist of that conversation, if you recall?

A. It was a very short conversation and my husband said [2345] something about, "This is ridiculous," and that is all I recall.

Q. Mrs. Robinson, do you and the members of the Robinson family know Dr. Pratt very well?

A. No, I would say not.

Q. What would be the extent of the acquaintance which your family had with Dr. Pratt?

A. Well, I think my father-in-law met him at



(Testimony of Ruth Johlin Robinson.)

tea once, and they did entertain my family but except for inviting him to tea once I never have invited him to any social occasion at our house. I have invited his wife and his children but I never invited him.

Mr. Sembower: That is all, your Honor. We will offer Mrs. Robinson in connection with damages in another phase of the case, but that is all at this time.

Mr. Kimball: No questions. [2346]

\* \* \*

The Court: You may rest, and then I think it is too late to continue on tonight any way with anything further. If there are any exhibits you have overlooked, you have the privilege of offering them in the morning or supplying any deficiency you may have overlooked at that time.

Mr. Sembower: Thank you.

The Court: I assume that there will be motions here for dismissal?

Mr. Rosling: Yes, your Honor.

The Court: I would like to say this, that I don't know whether it is practical or not, but I would like to not take too much time with those motions. I have this feeling about it, that, after all the time we have spent for this trial and considering the character of it, it is a case, particularly on the conspiracy feature, that should be decided by the Court on all the evidence and not on motion to dismiss. The restrictions on the Court are very marked in

a case of that kind. As I view it, on motion to dismiss, I have to view the evidence the same as I would if we were trying the case before a jury and a motion was made for a directed verdict at the conclusion of the plaintiff's case; I am obliged to resolve all conflicts in favor of the [2347] plaintiff. If there is a conflict of testimony, I must take the testimony as favorable to the plaintiff and the plaintiff is not bound by unfavorable testimony of these adverse party witnesses whom he has called, and I think the Court, too, is obliged to place the most favorable, reasonable inference that may be placed on the evidence in arriving at a conclusion, and I think that certainly as to most of the defendants, any way, I think it would be preferable from my standpoint to decide it on all the evidence. There would be a great deal of difference if the defendants immediately rested and submitted the case because there is an entirely different situation, particularly in view of the fact that the defendants contend that evidence of the conspiracy must be established and the plaintiff has the burden of establishing it by clear, cogent, convincing proof.

So, while I am not trying to cut you off from making the motions or from arguing them, but I suggest that you not take too much time regarding them, and I have this suggestion: That as to those defendants as to which the motions are denied, I see no reason why you can't adopt the testimony that has been given here by the defendants. I don't think it is necessary for you to go over all that ground again and make a record as to the [2348]

testimony. If there are some things that have been omitted, of course, that is a different situation.

And, also, of course, on these motions, I would not be in a position to determine whether or not the Brooks complaint was entirely unfounded and not based on factual foundation. I have to assume that it was a false charge that was made by Mr. Brooks because that is the purport of the favorable testimony of the plaintiff.

Mr. Rosling: May I make one comment, your Honor?

The Court: Yes, surely.

Mr. Rosling: The Court has referred to a rule, I think, which we are all familiar with because it prevails in the Superior Court, that upon a motion of this sort, the Court is required to resolve all doubts in favor of the plaintiff and all reasonable inferences construed in favor of the plaintiff, and so on. But this motion is based upon Rule 41(b) and the courts have held that the purpose of that rule, expressed as it is, is to eliminate just what the Court has suggested as controlling you as to the manner in which the evidence should be viewed, and we have authorities to this effect, that under 41(b), the Court, on a motion to dismiss, it is the duty of the Court to weigh the evidence just as if all of the evidence were in, [2349] and that this principle of presuming everything in favor of the plaintiff and disregarding unfavorable evidence, and so on, no longer obtains following the 1948 amendment to Rule 41(b).

The Court: Well, I will take a look at that rule

if that is the one under which you propose to base this motion.

Mr. Sembower: Your Honor, not wishing to interrupt, but this impresses me as argument. Of course, our position is entirely different from Mr. Rosling's. I am learning of it for the first time and it is new and unusual, I should say, but I don't think that we should go into the argument at this time unless it is the pleasure of the Court.

The Court: Well, I hadn't in mind going into the argument upon any of the motions, but I think I invited comment certainly by my remarks on what the basis of the motion should be and what the Court's attitude toward the evidence should be.

Mr. Rosling: I realize the Court is away from his own library and I have here Volume II, Federal Practice and Procedure, Barron and Holtzoff, and I would suggest that the Court look at Pages 642 and 612, which is the opening of the chapter, and the Court will see what I have in mind. [2350]

Mr. Kimball: That is the rule upon which all of our motions are based or will be based.

The Court: I think that you should be heard on this in the morning, if you care to be, on what the basis of the Court's view on the evidence should be on a motion to dismiss. I had assumed it was the usual, conventional motion that we are all familiar with in the old practice.

Mr. Rosling: Well, I am sure that the reading of those two citations will clear the matter up.

The Court: Yes, all right.

Court will adjourn, then, until tomorrow morning at 10:00 o'clock. [2351]

\* \* \*

Mr. Rosling: May it please the Court, the Washington State Medical Association moves for a dismissal of this action on the ground that upon the facts and the law, the Plaintiff has shown no right to relief. [2361]

\* \* \*

Mr. Freise: Okay, it seems as though they indicate I am supposed to make my motion at this time.

Well, your Honor, in order to set the record straight, also, I haven't had much opportunity to get this into the record, that the true name of the Walla Walla General Hospital is the Upper Columbia Medical Missionary and Benevolent Association, and somehow or other they have always referred to it as the Walla Walla General Hospital.

And under and pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, I make this motion in behalf of the said Walla Walla General Hospital for an involuntary dismissal of the above-entitled cause as to this particular defendant on the ground and for the reason that the Plaintiff has shown no right to relief as to this defendant, the Walla Walla General Hospital.

\* \* \*

Mr. Smith: May it please the Court, the Sisters of Charity of the House of Providence, a corporation, a non-profit [2366] corporation, known in this action as St. Mary's Hospital, moves for an in-

voluntary dismissal of this cause pursuant to Rule 41(b), Federal Rules of Civil Procedure, on the ground and for the reason that upon the facts and the law, the Plaintiff has shown no right to relief as to this defendant.

Mr. Tuttle: If the Court please, all the defendants in this case represented by Mr. Kimball and myself, being all the defendants other than the two hospitals and the state association, now move the Court pursuant to Rule 41(b) of the Federal Rules of Practice and Procedure for an order of dismissal on the grounds and upon the facts and the law, the Plaintiff has shown no right to relief. [2367]

\* \* \*

Now, in the light of that, I want to discuss with the Court the circumstantial evidence that might be in this case. So far as I can determine from having listened [2396] to this testimony, there isn't a scintilla of evidence in this case that at any time any one of these defendants agreed to wrongfully expel Dr. Robinson from the society, and it seems to me that to get down to the point of this case and not to make an argument, as the Court suggested he didn't want to hear of attempting to negate the evidence which has been produced, it seems to me to get down to the basis of this thing, that the plaintiff was going to have to prove two things in order to prove conspiracy in this case: (1) He was going to have to prove that there was no foundation in fact for a complaint to be made by Mr. Brooks to the society, and (2) he was going to have to prove by

clear, cogent and convincing evidence, and keeping in mind the rule of circumstantial evidence, that there was no basis in fact for the board of trustees or the society, the Walla Walla Medical Society, to believe the complaint.

If this were a case where Dr. Robinson had denied that he had ever had any contact with Mr. Brooks or that he had ever had any telephone conversation in which the discussion of the revelation of the disease had been contained, or had he denied that he had ever conditioned the disclosure of the disease upon the demand which he made for the letter, then there might be evidence to weigh with reference to whether or not the defendant had acted in good faith in removing Dr. Robinson from the society; but on the record [2397] before this Court and on the record of Dr. Robinson's own testimony, not going outside of that, the evidence will conclusively show that there was a basis for Tom Brooks to act and that there was a basis of fact for the board of trustees of the Walla Walla society to submit their findings and recommendations to the society meeting as a whole and that there was a basis in fact for the society to find Dr. Robinson guilty and to impose the punishment which it did, and, that being true, there can be no inference of any conspiracy; the rest of everything that is in this case, day after day after day of testimony, is merely a suspicion which lurks in Dr. Robinson's mind and which apparently has been lurking there since August the 11th, 1950, when he wrote his letter criticizing the bureau.

Now, Mrs. Robinson testified as the last witness yesterday and on behalf of the plaintiff in response to a question by Mr. Sembower that in the Sunday morning telephone conversation which Dr. Robinson had with Tom Brooks that no mention was made of a letter. Well, I admit, your Honor, that Mrs. Robinson may not have heard or she may have forgotten about it, but the testimony of Dr. Robinson himself is to the effect that he did mention the letter in that Sunday morning conversation and that he did make that a condition, the production of that letter, of his not disclosing to the public health authorities the disease for [2398] which he was treating both Mr. and Mrs. Brooks.

In connection with that, I want to quote from a transcript of the testimony in this case, commencing at page 942—

The Court: That is the plaintiff's testimony in this trial?

Mr. Tuttle: In this trial, your Honor, yes.

(Reading.)

“Q. All right, and what did you do on Sunday morning when you talked to him?”

This is following the discussion about the Sunday morning conversation, telephone conversation, with Mr. Brooks.

“A. Well, you see, Friday night the last thing that Tom Brooks said to me was, he said in connection with my asking him if he couldn't come in and get this question settled about his treatment and proper diagnosis, further diagnosis.”



I have merely cited that to point out that what follows is in relationship to the Sunday morning conversation between Dr. Robinson and Tom Brooks. Proceeding then to page 944, question by Mr. Tuttle:

“Q. Well, then, did you discuss the letter again, about bringing the letter in again, on the Sunday morning conversation? [2399]

“A. The letter came up in the conversation, yes.

“Q. And did you make that a condition of continuing your relationship with Mr. Brooks and the rest of the family, that he bring that letter in?

“A. Well, I think that that is generally speaking a fair statement as far as Mr. Brooks is concerned. I told him, ‘The situation is really urgent with regard to your health, much more than I had appreciated, and from the standpoint of the family and the people that are exposed to you, and,’ I said, ‘I am willing to take care of you, but I expect our relationship to be on a frank and open basis and one of the things that has come up is this matter of the letter, and if you are going to come in, I expect you to bring the letter with you.’ ”

And again quoting from page 946 of the transcript of the testimony in this case, Dr. Robinson being cross-examined:

“Q. I am referring now to your deposition in this case, Doctor, at page 270, at line 18:

“ ‘Q. Let me ask the question this way, and I will waive the former question. [2400] What would Mr. Brooks have had to do to prevent you from re-

porting his condition to other members of his family and the health authorities? Do you object to that?

“ ‘Mr. McNichols: No.

“ ‘Come into the office.

“ ‘Q. That is all?

“ ‘A. Well, I made it a condition that I wasn't interested in having these people come in unless they brought the letter with them. They made the letter a big issue, not I. This mysterious letter floating around that nobody knew where it was and they hadn't received it a week later, so I naturally made that a condition because by that time they were, I thought, pretty deceitful about the whole thing and I was willing to work out what I could with them, but I wanted them to come clean on this letter.’

“ ‘And now, would you say you made it a condition of continuing your relationship with the family that they bring the letter in to you?

“ ‘A. I believe that by that time that it had become a condition of my continuing a relationship with them.’ [2401]

So I submit, your Honor, that on the first point, was there a basis for Tom Brooks to make a complaint about having been threatened, that Dr. Robinson would reveal the disease to the health officer and his family if that letter was not brought in, cannot be in question in view of the very testimony which Dr. Robinson gave which I have just read to the court in which he repeatedly stated that he had made the production of that letter by Tom Brooks, that is, to get it from his son-in-law and

bring it into the office and produce it for Dr. Robinson, had been made the condition, the Doctor testified that that was the thing that he would have to do to avoid Dr. Robinson's reporting him to the health office. [2402]

\* \* \*

The Court: Surely it isn't your position that because they were misguided and used the wrong procedure, that that would make them members of a conspiracy. Do you think that their bad faith or bad purpose, as you construe it, was directed against Dr. Robinson or was it directed [2451] against anybody who might come within the orbit of their procedure?

Mr. Sembower: Well, I would say it was directed against Dr. Robinson.

The Court: When did they get that wrongful purpose and intent against Dr. Robinson?

Mr. Sembower: Well, I would say that the first point at which they got it was the letter—however, everything starts with a small beginning—the letter which was sent out on October the 16th from Mr. Fullerton to Mr. Neill.

The Court: Inquiring about whether there was a state grievance committee?

Mr. Sembower: Inquiring, that is correct.

The Court: Well, in that letter, he didn't mention Dr. Robinson.

Mr. Sembower: No, that is correct, at that time. And then instead of outlining procedures or saying there was no committee, they indicated that there was going to be a procedure or was one available.

The Court: I don't wish to disturb your argument; I want to hear it fully, but, Mr. Sembower, will you tell me this: In all these procedures that were taken by the state grievance committee, what would they have done differently if they were in good faith trying to process a legitimate grievance that had been made to the local society? [2452]

\* \* \*

Now, so far as Dr. Robinson's testimony is concerned, he didn't testify that the letter was the crucial thing at all in dealing with the Brooks family. Examination of his testimony shows that this family had been a problem to him. Mr. Tuttle said this morning it would seem to be the kind—

The Court: Do you have reference to his testimony before the Court here and not testimony before the board of trustees?

Mr. Sembower: Well, his testimony before the board of trustees was to the same general effect.

The Court: He said in there, I think, that the letter [2467] was very, very important, it was a matter of great concern to him, it was the straw that broke the camel's back.

Mr. Sembower: Well, I think that is true.

The Court: He made much of the matter in the testimony.

Mr. Sembower: Yes, it was the straw which broke the camel's back so far as that was concerned.

Now, to read the blackmail statute of Washington in that connection, I don't know what the property

is, I suppose there is property in a letter. He didn't ask that they give him the letter.

The Court: I am not impressed with that [2468] argument.

\* \* \*

## ORAL DECISION OF COURT ON MOTIONS

The Court: At the outset, I think I should refer briefly to the manner in which the Court should regard the evidence and the testimony when a motion is made for dismissal by the defendants, as has been done in this case, [2492] under the provisions of Rule 41(b), and I again emphasize this because of my obvious misconstruction, I think, of the effect of that rule at one stage of the proceedings.

The rule without question, I think, contemplates that the Court may in its discretion at the close of the plaintiff's case take a look at the evidence and, as trier of the facts, find what those facts are, and if the facts and the law show that the plaintiff is not entitled to relief, may render final judgment on the merits. Under this rule, if the Court does elect to take this course, the burden does not shift to the defendants, but remains with the plaintiff, and the Court necessarily must resolve conflicts in the testimony, as he would do at the conclusion of the case where a jury has been waived.

This rule was so construed even prior to the 1948 amendment. It was so construed by the Ninth

Circuit Court of Appeals, which is the immediate superior of this Court, the next Court up in the judicial hierarchy. The only purpose of the amendment was to make it clear that the Civil Rules Committee and the Supreme Court adopted the view of the Ninth Circuit and the other jurisdictions which gave the interpretation to the rule which I have just stated. I think this will become clear in reading short excerpts from the opinion of the Ninth Circuit Court of Appeals in the case of *Barr vs. Equitable Life Assurance Society*, which is reported [2493] 149 Federal (2d), 634, which was decided in 1945 before the adoption of the amendment, and the opinion is written by Judge Denman, who is now Chief Judge of the Ninth Circuit Court of Appeals. In the course of the opinion, he states:

“The trial proceeded to the conclusion of the plaintiff’s evidence \* \* \* This court in *Young v. United States*, 9 Cir., 111 F. 2d 823, 825, held that Federal Rules of Civil Procedure 41 (b), 28 U.S.C.A. following section 723c determines the procedural place at which the court in a jury-waived case, may decide upon the evidence offered on the issues raised by the pleadings. Rule 41 (b) provides that such decision on the merits may be made after the plaintiff’s evidence is submitted: \* \* \*

“To us the rule embodies sound common sense. It would be absurd to waste the court’s time and to impose upon the parties, both waste of their time and that of their counsel and witnesses, together with the unnecessary expense, in offering the defendant’s evidence, [2494] which, with reasonably

efficient advocacy, would do not more than enlarge the record.”

Now, in this case the reliance of the plaintiff has been upon conspiracy, or perhaps more accurately stated, the injuries resulting from the consummation and carrying out of an alleged conspiracy, and the importance of reliance upon conspiracy, and I think the proper reliance by astute and capable counsel for the plaintiff, is that here we have a situation where the individual defendants, with the exception, of course, of Mr. Edwards and Mr. Brooks, as to practically all of the acts and declarations which were relied upon here in the voluminous documentary evidence with which this case is documented, that practically all of those acts and declarations were done and made by these defendants as officers and agents of the corporate defendants; Mr. Fullerton as secretary, other defendants in various capacities at different times, as president, trustee, members of the grievance committee, of these local medical corporations. And it seems to me, under the law as I understand it and it has been contended here without too much conflict by the opposing parties, in the absence of conspiracy and in the absence of bad faith and wrongful conduct of some sort on the part of these officers and agents of the corporations, the mere fact that they may have made [2495] a mistake in procedure, as held by their highest medical judicial authority, would not make them individually and personally liable for damages in the absence of some wrongful concert of action or conspiracy. A person ordinarily acting in good

faith for a corporation under these circumstances would not be liable if it turned out that the higher echelons of the society determined that the proper procedure had not been followed.

That, I think, is good common sense, as well as law. I don't see how otherwise a society of this kind would ever dare take disciplinary action against a member. They would be gambling upon being personally liable in large sums in a court action in case the higher tribunal which they had set up should disagree with them as to whether they had strictly complied with the requirements of their constitution and bylaws. It would be just as impractical, I think, to provide that in case of an appeal in a civil action from this court, that in case the court was reversed by the Court of Appeals of the Ninth Circuit or by the Supreme Court, that not only the judge of this court, but that the clerk and the bailiff and all of his supporting personnel should be personally liable for damages that may have resulted to the losing litigant by reason of the reversal in the higher court.

So that I think the gist of this action [2496] necessarily had to be conspiracy, that there had to be something more than merely good faith acting by these defendants in the course of their representation of the corporate defendants in carrying out its purposes.

Now, I think it is obvious that the conventional definition for conspiracy that we usually find in the criminal cases doesn't apply literally to civil cases. There need not be a criminal act done in an unlaw-



ful manner or a lawful act done in an unlawful manner. There isn't any implication of criminality, of course, in a civil conspiracy; it simply means that there must be an unlawful conspiracy agreement to injure another person substantially in his personal or property rights, and, of course, it isn't necessary to prove that there was a formal or express agreement; it is sufficient, as has been pointed out here, if there has been a concert of action, combination, implied, tacit agreement to do something that will injure another. It may be, and usually must be, established by circumstantial evidence, but the fact remains that it must be shown that there was something wrongful, wrongful purpose, combination, and concert of action, to injure another.

I think I should point out in this introductory way that once the conspiracy has been established, each member is legally responsible for the acts and declarations of every other member, but unless and until the conspiracy [2497] has been established, the acts and declarations of an alleged member are binding only upon himself, and membership or participation in a conspiracy may not be proved by the acts and declarations of alleged co-conspirators.

Now, much has been said about the burden of proof here in this case. I am not too much concerned about that, whether it should be by preponderance of the evidence or clear, cogent and convincing evidence, because I have come to the conclusion that there isn't any conspiracy here, but I think that a statement by the Supreme Court of this state in the

case of Charles Baun against Lumber and Sawmill Workers Union, reported in 46 Washington (2d), 645, is quite pertinent and very helpful in the decision of this case. And I wish to point out that this being a diversity case, the substantive rules of law that govern the court here and are binding on the court are the substantive law as announced and adopted by the Supreme Court of this state. Mr. Justice Frankfurter has remarked that in a diversity case, that is, where the jurisdiction of the court depends upon the parties being citizens of different states, that the Federal Court really acts as another court of the state, and what is substantive and what is procedural has been given a very unusual definition in the cases following *Erie vs. Tompkins*, *Guaranty Trust Company vs. York*, and others. In those cases, the Supreme Court has gone so far as to say that [2498] almost anything that would substantially affect the result of the lawsuit must be considered as substantive in the sense that the Federal Court is bound to follow the substantive law of the state.

So that here, I think, the essence of the conspiracy and the method in which it must be established are substantive in that sense and are binding on this court.

And in this opinion to which I have referred, and I am reading now from Page 656 of the opinion, the Supreme Court of Washington states:

“While it is recognized that a conspiracy may be, and usually must be, proved by acts and circumstances sufficient to warrant an inference that the de-

defendants have reached an agreement to act together for the purpose alleged, the test of the sufficiency of the evidence is that the facts and circumstances relied upon to establish the conspiracy must be inconsistent with a lawful or honest purpose and reasonably consistent only with the existence of the conspiracy. As stated in *Harrington v. Richeson* (1952), 40 Wn. (2d) 557, 245 P. [2499] (2d) 191:

“ ‘Where the facts and circumstances relied upon to establish a conspiracy are as consistent with a lawful or honest purpose as with an unlawful undertaking, they are insufficient.’ ”

And then a number of prior Washington decisions are cited here.

I think that is particularly pertinent here, because, as I have said before, here we have a situation where these defendants, for the most part, were acting as officers, agents and representatives of the local medical corporations, and it isn't sufficient to show that their acts could be construed as being wrongfully directed against this plaintiff in order to accomplish his improper expulsion, if they are equally consistent with what these people would have done if a valid complaint had been presented to the society and they were acting in the course of it and doing their duty as best they saw, it was consistent with that sort of an interpretation and the evidence is insufficient.

Now, looking at the case as a whole, I have come to the conclusion—and I remarked awhile ago I am not greatly concerned about the question of

burden of proof, because after having this matter fully presented and after considering the documentary evidence and hearing most of the individual defendants testify and having the benefit of [2500] those intangible factors that come from seeing witnesses, hearing them, sizing them up and judging what their motives are and what credit may be given to their testimony, and, as I say, I think that is one of the skills that come with practice on the trial bench; I have found it so—I have come to the conclusion that not only is there insufficient evidence of a conspiracy, but there never was a conspiracy in fact in this case.

Now, in the first place, there isn't any evidence here, certainly not a scintilla of evidence, that either Mrs. Edwards or Mr. Brooks were in any way influenced or induced by any of these other defendants to make these complaints, and almost without exception the circumstances upon which the plaintiff relies are as consistent with good faith effort to deal with a bona fide complaint and a troublesome situation existing here in Walla Walla as they are with the inference that they were motivated by a conspiracy or a bad purpose to unlawfully expel the plaintiff from the medical society. I think everything that happened to the plaintiff, when we look back upon it, take a common sense view of what transpired here, unfortunate and regrettable as it is, and as the Court views it, was the logical and natural result of his own conduct.

I am not specifically impressed by the argument that I should find a conspiracy here because it ap-

pears that [2501] there was resentment on the part of some of these defendants, common, I think, to members of the medical society, resentment against the plaintiff because of the attacks he had made upon the medical bureau and the grievance committee, because I think the resentment was caused by the attitude of the plaintiff and by the things that he did and the manner in which he did them and the intemperate way in which he carried on his attacks and his lack of regard, shall we say, for factual accuracy in his criticisms of the Edwards complaint and the letter that the grievance committee had Mr. Fullerton send out to Noel Edwards. In other words, I think that the most that you can say on that phase of the case is that the plaintiff's acts and the manner in which he conducted himself created an unfavorable atmosphere in which he was tried for expulsion and his defense would probably have been accelerated, as any attorney could have told him; if he had conducted himself differently, his chances of not being expelled would have been better. He made himself unpopular, I daresay, with his fellow physicians, just as the same kind of conduct would have made him unpopular with the members of a labor union or Chamber of Commerce or a church congregation, but I don't think that that sort of attitude, which his conduct induced, is to take the place of the evidence that is required to show an unlawful conspiracy.

Now, it is my finding and my conclusion, viewing [2502] these facts, that throughout these pro-

ceedings there was substantial compliance with the procedural due process provisions of the constitution and bylaws of the local medical society and the state medical association; that there was factual substance to the Brooks complaint, so that it cannot be said that the board of trustees of the local society acted injudicially or capriciously or arbitrarily in a finding that it was well founded from the evidence which they had before them, and that it appears from the evidence that these defendants and each of them throughout all these proceedings acted in good faith.

I do not propose to go into the evidence or the exhibits in detail. It would be an impossible task and the space of time would make it impractical. I do think it might be helpful, however, to consider just how this whole series of events came about and how it started in the first place.

I find no evidence whatsoever that there was any bad feeling toward Dr. Robinson or any disposition on the part of the other members of the medical profession here to resent him prior to this Edwards complaint episode. The grievance committee was established, I think as the evidence shows here, because the American Medical Association thought it was a good idea to promote better public relations between the doctors and their patients, perhaps having in mind in the background the bogey man shadow of socialized medicine. [2503] At any rate, it was thought good policy on the part of the American Medical Association to have these grievance committees, primarily for the purpose of ironing out differences between doctor and patient, keeping

people better satisfied, keeping down complaints, promoting public relations.

Dr. Stevens in some way, reading the literature, or he told about finding out about it, thought it was a good idea, became sold on it, thought it would be a good idea to put it in practice here, so that Walla Walla was one of the first places in the country, as I recall the evidence shows, in which the plan was actually adopted.

I don't think there is anything sinister or to be given great weight that the membership was kept secret. I think that the then president, at least the leaders of the society here, thought it was best to protect the members of the committee from undue annoyance by having people call them up at their residences, perhaps, at all hours with complaints, and that to afford them protection in that way, it was thought best to have the membership kept secret.

And I don't think it is at all unusual or strange that there weren't a full set of regulations immediately adopted or that the committee didn't meet each time with formal notice and sit around a table and take up things in that way. That isn't the way these—I won't say small [2504] towns, because Walla Walla isn't a small town—but shall we say medium sized cities, it isn't the way committees operate. A chamber of commerce committee wouldn't operate that way. The chairman would get in touch with one or two of the other members and say, "Shall we do so and so? Sure, it is a good idea, let's go ahead and do it." And I don't think any great importance

should be placed upon the manner in which the committee operated. It was new and it took them time to get their method of operation worked out.

I think Dr. Stevens was genuinely enthusiastic about this plan and motivated by the best of purposes, and when the Edwards complaint came along, was made to Mr. Fullerton, just like an enthusiastic duck hunter getting a chance to try out a new gun, here was a chance to try this out and he was going to do it. And the committee being secret, of course, it was perfectly natural that they direct the secretary, Mr. Fullerton, to write to Mr. Edwards and tell him what the conclusion of the committee had been without giving the names of the committee, and I don't think it is a circumstance, one that is entitled to great weight, that this happened to be written out on the Walla Walla Service Corporation stationery, rather the medical society stationery, because they had common offices and I suppose stationery in adjoining drawers and the letter was written out in that way. [2505]

I might say first that Dr. Stevens did go, of course, as the evidence shows, and talk to Dr. Robinson and he didn't get much encouragement there. As a matter of fact, there was lack of co-operation and rather a surprising and, one would think, an unexpected reaction to his friendly efforts to adjust this difference between Dr. Robinson and his patient, and he was told, in effect, that Dr. Robinson didn't think it was any of his business to meddle in such a way, but he went ahead anyway and he sent out this letter. And I had great difficulty in trying to



get Dr. Robinson's construction of this letter in accordance with the way he construed it at the time. I think Dr. Robinson is too intelligent, too brilliant a mentality, to read into this letter the things that he did, unless he just simply wanted to make a great to-do about it and wasn't too scrupulous about the accuracy of his comments regarding it.

This letter to Mr. Edwards, I think, makes it perfectly clear that Mr. Fullerton didn't make the investigation or that Mr. Fullerton wasn't making the criticism; that Mr. Fullerton was simply informing Mr. Edwards of the action of the grievance committee regarding this complaint. This is Plaintiff's Exhibit 15 and the body of it is:

“Dear Mr. Edwards:

“Your complaint against Dr. Robinson has [2506] been investigated by the Grievance Committee and the following is their report:

“‘Dr. Robinson was questioned regarding the incident and the facts were substantiated with the exception that Dr. Robinson had called the patient's home several times and was unable to contact the relatives since the child had been taken to another home. The Grievance Committee feels that that it is unfortunate that the dissatisfaction had occurred and feels that some of the responsibility is probably due to the excitement at the time.

“‘The charge of \$1.50, which Dr. Robinson made for the telephone calls and the time taken away from his usual other work, does not amount to very much,

whereas the majority of doctors in the community do not charge for telephone calls, there is nothing to prohibit them from doing so, and it can be shown to be justified since [2507] a doctor assumes responsibility when he gives advice either personal or over the telephone. He cannot be expected to assume such a responsibility for nothing.

“ ‘In this case, however, since there was a misunderstanding regarding the prescription, the Grievance Committee feels that the best interests of all concerned should be to drop the matter leaving the bill of \$1.50 unpaid, especially since the little patient seems none the worse for her experience.’

“Sincerely yours,

“C. E. FULLERTON,

“Committee Secretary.

“cc: Miles H. Robinson, M.D.,

“Drumheller Bldg.,

“Walla Walla, Wash.”

That letter was dated the 30th of September, 1950, and on the 9th of October, Plaintiff's Exhibit 16, Dr. Robinson writes this letter regarding it to Dr. Sam R. Page, then President of the local medical society:

“Dr. Sam R. Page,

“Drumheller Bldg.,

“Walla Walla, Wash.

“Dear Sam: [2508]

“As President of our Society, I am writing you with regard to a very peculiar communication which I recently received, signed by C. E. Fullerton, Com-

mittee Secretary. The letter is marked 'Re: Report of Grievance Committee, Dr. M. H. Robinson, Date of Complaint 8/29/50, Date of Finding 9/27/50.' I presume from this that the committee of which Mr. Fullerton is secretary is this Grievance Committee.

"It may be that you know that Mr. Fullerton is taking it upon himself to send letters to the public analyzing, criticizing, and passing judgment on the conduct of a medical doctor's practice; but I want to make sure that you and the other officers of the Society are, in fact, aware of this before it goes any further. Enclosed is a copy of his letter.

"So far as the letter itself is concerned, its inaccuracies are only surpassed by its extraordinary insolence. I deny absolutely the right of either layman or doctor to officially censure me regarding my financial arrangements with my patients. [2509] Rather more serious, were it not so ridiculous, is the right of Mr. Fullerton to send letters to my patient stating categorically that certain telephone calls did not take much time from my work and did not amount to very much. This extraordinary insight into the nature of my work, the time it takes, and its true worth can only be the product of a vivid imagination uncontaminated by anything remotely resembling the training and experience of a doctor of medicine.

"I am trying not to jump to conclusions, but it seems to me that this letter is typical of the authority which Mr. Fullerton exerts. I believe that it is imperative that all other members of the Society be acquainted with the facts in this case and the

principles involved, and that his resignation from any official position with our Society be arranged at the earliest opportunity.

“So far as the recommendation of this letter to the patient that my bill not be paid, it naturally means absolutely nothing [2510] to me. The opportunity will doubtless present very soon when I can discuss with the parents of ‘the little patient’ the uncertain guidance they are getting in this letter.

“I hope it will not become necessary for the Society to publicly disclaim the occult workings of this Grievance Committee which it has elected; and for my part, I will do what I can to keep the thing quiet. But as you can see, the provocation to me is extreme.

“As soon as it might be convenient, I would like to talk this over with you; but I am sending you this note immediately on learning that Fullerton’s letter reached the patient’s father, since I think you would like to know about the matter without delay.”

That is October 9th. Three days later, Dr. Robinson writes, I believe, the first of his series of numerous “Dead Doctor” letters to the other members of the medical society in Walla Walla. This one is October 12, 1950, Plaintiff’s Exhibit 20:

“Dear Doctor: [2511]

“Would you like to have an official committee of your local medical society write a letter to one of your patients and discuss the quality of your medical service?

“What would be your reaction if this letter stated that your medical service did not take much of your time and advised the patient not to pay your bill?

“Would you feel better if the executive secretary of the committee informed you of the affair by sending you a carbon copy of the letter?

“If a patient had a complaint about your work, would you like to have all such complaints cleared through a layman who has authority from the committee to investigate the complaint, check the veracity of the complainer, hold up or continue the matter, and so forth?

“The present lay investigator and the present Grievance Committee might treat you with entire justice, assuming they could ever learn enough about your patients' diseases to do so, but with this set-up and this precedent, it is pleasant to [2512] contemplate what official letters might be written to your patients if a new lay investigator and a new secret committee were appointed in the future and said parties happened to be, for reasons of their own, prejudiced against you?

“I have put these questions in a personal way, because I deeply believe that this issue is extremely important to every one of us. Enclosed you will find a copy of just such a letter as I have described above, which was sent, without consulting me, to one of my patients 12 days ago. Also enclosed is my protest to our President and the other officers of our Society.

“As I said at our last business meeting, I fully accept, as we all must, the right of the Society

to investigate alleged malpractice; said malpractice, as I understand it, is harm done to the patient which represents medical service 'below the standard of the community' as the courts have defined.

"But I cannot accept the right of anyone, doctor or layman, to get his hands on the private trade which I made with a patient, [2513] whereby he and I decide how much of his labor will be traded for the labor of my service to him."

Now, the letter is long and I am not going to read all of it. He does say that:

"What the committee is trying to do in my case is enforce a low price in restraint of trade. Despite its fine words about telephone charges, its decision is that the medical service over the telephone should have been free of charge. This causes my work as a whole to that patient to be rendered at a lower price. Each doctor is obviously an independent business in himself, and a fixed low price restrains his business just as definitely as a fixed high price.

"For if the doctor is held to a fixed low price, his only escape from financial suicide is to limit himself to patients who will stand for the quick visit and large patient volume characteristic of prepaid medicine. So in this particular stage of medical history, a fixed low price forced the doctor into prepaid medicine. [2514]

"In medicine we know that the public rightfully expects high quality service. When a patient puts his health in a doctor's hands, he expects advice and treatment based only on that doctor's skill, honesty and idealism. Every case is an individual problem, which should be handled by an individualist, by a

free man. The only thing that guarantees the patient's freedom is the doctor's freedom. If some third party has the power to enforce the length of time a doctor works on a patient and the number of dollars which are charged, that doctor is not a free man.

“Our present lay investigator and our present secret committee probably never realized it, but they have in their hands a perfect machine to grab the medical power in this community. As many old rules of medical ethics amply testify, the faith of patients in their doctor is easily shaken by other doctors. What will a patient think of you if an official committee of the Society tells him that you didn't do very much for him, you overcharged him, and one [2515] of the reasons it is letting you off easy is because ‘The little patient seems none the worse for her experience’?

“Aside from the general principles that stand against the actions of this secret Grievance Committee, the legal aspect must also be considered. From a legal standpoint, the committee has publicly and effectively attacked my reputation. The statement that neither the time spent on the patient nor the charge made for this time amount to very much can easily be construed by the patient as a case of substandard work at substandard charges. Then the letter ends with the implication that it was fortunate the incompetent medical service did not result in harm to the patient, and leaves to the imagination what further disciplinary action would otherwise have been taken against me.”

I had thought and so construed the letter that this reference to "especially since the little patient seems none the worse for her experience," pertained to her experience in swallowing the pills.

(Reading continued:) [2516]

"The immediate result of this attack is that I have lost the trade of seven people in three related families, each of whom I have treated, and two of whom have chronic diseases of the utmost severity."

Now, I will read just another paragraph here as to what Dr. Robinson thinks should be done about this:

"It seems to me that the following restitution to me and to our Society is in order. The author of the letter to my patient's father should write another letter to him, satisfactory to me, and apologize for the first letter. Every member of the secret Grievance Committee responsible for the injurious letter should be barred from office in our Society for a term of one year. No layman should hold office, executive or administrative, in our Society. Lastly, we should abolish this secret Grievance Committee and elect a Committee on Ethics, specifically instructed to deal only with malpractice and never with fee complaints."

Now, I am not going to refer specifically to others in a series of "Dear Doctor" letters; I will [2517] simply summarize by saying that, in my view, they were not fair and accurate summaries of what was said or what was intended to be said in the letter which the grievance committee sent to Noel Ed-



wards; that they made statements which were not justified and were unduly intemperate; and I recall here in the calmer atmosphere of this trial, Dr. Robinson was obliged in his testimony on more than one occasion to explain his intemperate statements by saying that he perhaps overstated for the sake of emphasis or that he may have been wrought up on the occasion or something of that sort.

I might say that I do not regard this Edwards letter, Exhibit 15, as in any sense a disciplinary action or punitive proceeding, directly or indirectly, of any kind against Dr. Robinson. I think it was just what the evidence showed it was intended to be—an attempt on the part of the newly appointed grievance committee to adjust a minor misunderstanding and difference between a doctor and a patient in the interest of better public relations, and it has been said that this letter, the Noel Edwards letter, was the incident that sparked this whole unfortunate chain reaction, but a spark doesn't amount to much unless it comes in contact with an explosive, and I think the explosive that this spark came in contact with was the temperament and character and viewpoint of Dr. Robinson, and so the whole unexpected explosion resulted. [2518]

Now, judged by ordinary standards, it seems to me, the reaction of Dr. Robinson to the Edwards complaint incident was extraordinary and unexpected. It is hard to understand his insistence that he wanted the original letter, or at least an opportunity to inspect it, and his repeated visits to

College Place to members of the family and to people involved here in their places of work and telephone calls are hard to explain on the basis of the letter in the background, and it is hard to explain his attitude in placing upon Mr. Brooks, as head of the clan, I believe he expressed it, but actually only the father-in-law of the recipient of the letter, the responsibility for producing it.

I do not have, as I conceive it, directly before me the question of the truth or falsity of the Brooks complaint, although the question does bear indirectly upon the question of conspiracy, because if the complaint is genuine and well founded, of course, it would be that much less circumstantial evidence that it was a part of the conspiracy. At least I will say this, that, in my judgment, the plaintiff has not by evidence in this case shown the Brooks complaint to have been false.

The Edwards testimony, it is true that Mr. Edwards at first stated that in telephoning him and informing him of the infection which his father-in-law and [2519] mother-in-law had, he used the word "syphilis" and later on he changed his testimony and said that he conceded that Dr. Robinson had not used that word. I wish to point this out, however, that as I view the record here, at the time that Mr. Edwards made that concession, he was not even under interrogation. It was at the meeting of the board of trustees in which both Mr. Brooks and Dr. Robinson were present and Dr. Robinson was making his statement in answer to the charge of Mr. Brooks and in the course of his statement said that

he had not used the word "syphilis" in talking with Mr. Edwards, and Mr. Edwards, without being interrogated and quite spontaneously, so far as the record shows, spoke up and said: "I will concede that." And Mr. Brooks said: "What is that?" And Mr. Edwards said: "I will concede that Dr. Robinson did not use the word 'syphilis.'" It shows at least the disposition of Mr. Edwards to be fair and to make the concession where he felt he had been mistaken, and I think the position as it has been throughout, that he did communicate and even telling of a virus which might affect the children and affect others, would, I think it may be inferred, carry the information as to what the nature of the disease really was.

But, at any rate, I think we have to take into consideration that in the making of this Edwards complaint and the Brooks complaint, that so far as it concerned the [2520] actual incident of what Dr. Robinson said to the custodian of the child in the telephone conversations, it was either first or double hearsay, because I think Mrs. Edwards didn't hear the conversation when she made the original complaint to Mr. Fullerton; she was stating what she understood had been said by Dr. Robinson to somebody else; and then Mr. Brooks certainly had no first-hand knowledge, and when he made the complaint before the board of trustees of the medical society so far as the Edwards incident was concerned, he was probably telling them what Mrs. Edwards had told him that somebody had told Mrs. Edwards, so there was a great deal of opportunity,

as we know in conduct of court proceedings, for inaccuracies to creep in, mistake to creep in a situation of that sort.

Now, with reference to the American Medical Association decision, as I understand the attitude of the defendants here, they are not questioning the finality of that decision, nor am I. It was provided for in the bylaws of the local society that an appeal could be taken to the Judicial Council of the AMA, and when that appeal was taken and the local society was reversed, that reversal became final so far as the right to reinstatement of the plaintiff was concerned. The bylaws of the local society provided, however, and I think he is bound by them, it is in the nature of a contract between the society and its members, [2521] that if he is suspended or expelled by the local society, he shall remain in that status and not be eligible for membership or not be a member of the society until the appeal had been determined, and assuming that the decision of the American Medical Association's Judicial Council is final, I don't think that I need to construe it for more than it purports to be, which is a decision purely on the procedural aspects of the expulsion in which it is held that there had not been strict compliance with the procedural requirements, and for that reason the action of the local society was reversed.

I haven't the question before me, I am not reviewing the action of the Judicial Council, I am not deciding whether Dr. Robinson was entitled to reinstatement; I am simply here passing upon the question of whether he is entitled to recover damages

from the officers and trustees of the association who carried through the procedure which was held to be not in accordance with the constitution and bylaws, and, as I pointed out before, I can't believe, until the oracle in San Francisco tells me that I can so believe, at any rate, that the mere fact that there has been procedural defect of insufficiency in the proceedings of the medical society corporation in expulsion of a member, and that that has been found by a higher tribunal of the society, that that automatically and by itself and [2522] per se makes every officer and agent, trustee and member of the grievance committee who participated in any way in the expulsion personally and individually liable for any damages which the expelled member may have suffered by reason of his expulsion. Logically, if that is true, I don't see why we should confine it to the president and the trustees and the members of the grievance committee; it would seem to me it would apply equally to all the members of the society, at least to all those who voted for expulsion; and I don't believe that there would be individual liability unless you can show bad faith or some wrong-doing individually on the part of the individual defendants, and that gets us back to the matter of conspiracy, which I think has not been established in this case.

Now, there are a number of other matters that have been raised here. The application for rehearing, I think that that has to be considered in the light of the situation as it existed and it had devel-

oped up to that time. The trustees, having reason to believe that this was a seriously contested matter and one which might lead to grave consequences, employed capable legal counsel to direct them and to see that all of their procedural steps were properly taken and they thought that they were proceeding step by step just according to the requirements, in accordance with their constitution and bylaws, and then they get [2523] this telegraphic communication that they had been reversed, it is only natural to assume that they were greatly concerned about it and wished to know why and to have a more definite statement and that they wished to procure a rehearing, if one were possible.

Now, it is true, I think, as the record shows here, that there was no specific provision for applying for a rehearing to the Judicial Council of the American Medical Association, but I had thought that any judicial body or any judicial tribunal or one which acts in a quasi-judicial capacity, if it has the power to hear and determine, it must have the inherent power to rehear within reasonable time and in accordance with reasonable procedures. I think that any court has the power to determine, should be able to say: "Well, I don't believe I gave that fair consideration," or "One side didn't have an opportunity to be fully heard, I am going to rehear that," and that is what the American Medical Association decided to do.

I concede that things were done here that wouldn't and shouldn't have been done by lawyers in the matter of personal communications to the court of

individual doctors, to the members of the Judicial Council, and calling attention to a suit that had been started here by the plaintiff against the members of the local society, but we have to remember that these people were doctors and not lawyers [2524] and they couldn't be held to the knowledge or accountability in procedural decorum that might be required of members of the legal profession, and coming at that time as it did and under the circumstances that it did, I can't see that it is sufficient evidence of a conspiracy in the first instance, a wrongful conspiracy in concert of action, ganging up by the members of the local profession to wrongfully oust Dr. Robinson from the society.

And I think the same thing may be said of the statements made by some of the doctors, apparently, that Dr. Robinson appeared to have a persecution complex and showed paranoiac tendencies. Those remarks were ill-advised and unwarranted. Of course, the opinions expressed were wrong, erroneous, but they were made under great stress of a situation that then existed. It is a little difficult for us to sense fully at this time, I think, and I think the reason they should not be held to be actionable here, is that they were made for the most part not openly and publicly and under circumstances which might indicate a desire or a purpose to harm Dr. Robinson, but were for the most part what golf players would call lockerroom talk or they were washroom conversations which the doctors had passing with each other and wondering just what made this fellow Robinson tick, anyway, and why all this volume of letters and

violent reaction against the action of the grievance committee. And [2525] they were mostly that character, except I think there was evidence that one of them expressed the opinion to a lawyer—I assume that that would be regarded at the time, at any rate, as confidential talk with a lawyer—who came in after the expulsion and tried to use his good offices to see if he couldn't do something for Dr. Robinson, and I think the statement the testimony shows was made to him.

And other than that, there was the letter of Dr. Pratt to the plaintiff's father, which was ill-advised and unfortunate, I think, but I was impressed by reading it that it seemed to me to indicate a genuine interest and an affection on the part of Dr. Pratt for this young doctor, a firm conviction that he was injuring himself greatly by his conduct and jeopardizing his professional future, and effort to really help him straighten out. I think that is the interpretation that I would place upon it. I think that we should attribute good motives, rather than bad ones, to people if the chances are equal. And these unfortunate expressions of the doctors about Dr. Robinson's mental state, as I say, insofar as they implied mental abnormality, they were erroneous, but looking at this record, they are not without some substance of foundation, because of the unusual reaction of Dr. Robinson, the unusual tone of his letters and the volume of his letters, and the manner in which he insisted upon applying to everybody, inferring the purpose on [2526] the part of every-



body, to harm him gave some substance to a diagnosis of persecution complex tendency.

Now, this letter of Dr. Pratt's is the last exhibit I am going to refer to at any length. It is a letter written on May the 24th, two days after the expulsion meeting of May the 22nd, to Dr. Robinson's father:

“Dear Doctor Robinson:

“Some uneasy circumstances have prevailed here during the last year in connection with Miles and I do not know whether or not he has been confident with you in regard to things. Further, I do not know even that Ruth Ann, his wife, is aware of the controversies which have beset him.

“At the beginning of the trouble which to my mind was insignificant I tried to dissuade Miles from pursuing his course but to no avail. Miles began writing voluminous letters to all the profession setting forth his views. These letters were followed by others. Investigations were made. Numerous meetings called and finally the State Grievance Committee was called in. Some six or eight doctors came to Walla Walla to investigate the matter on April 22nd last. [2527] Miles agreed to be there but finally refused on the grounds he was too busy with his practice and that he had no confidence in the state committee which I believe is composed of impartial and reputable men.

“This state committee heard all the evidence available and after due consideration found Miles guilty and recommended he be suspended for six months from the local medical society. In view of the find-

ings the local medical society called a special meeting and confirmed the recommendations.”

Well, that isn't quite accurate, but it is in Dr. Robinson's favor. They didn't take the recommendations, but voted on expulsion instead of suspension.

(Reading continued:)

“Of course this outcome is lamentable and we his friends feel we are powerless to influence Miles who I understand is bent on pursuing the matter in the courts which I fully believe would be futile.

“In view of the situation as it stands Mrs. Pratt and other doctors feel that Miles is suffering from some persecution complex, at least of that nature and that it is [2528] expedient that he be persuaded to drop the feud and devote his talents which he undoubtedly has, to his work.

“Miles has very considerable ability and a most respected wife and family and perhaps it would clean up things if you could find your way clear to come out in the near future.

“Do understand I feel for the boy tremendously but believe his course to be wrong and that I hope your fatherly advice will assist in resolving the difficulties.”

Now, I think what Dr. Pratt was trying to do was to get the father to come out and investigate this thing for himself and see if he could do something to assist in the tragic outcome of this controversy the son was having with the society. To me, it has every evidence of the sincere but perhaps misguided efforts of a volunteer Good Samaritan.

Now, so far as the St. Mary's Hospital is concerned, I haven't the Washington citation in mind—it was given to me by counsel for St. Mary's and I have examined the case—it seems to me that it lays down the rule here in Washington that a private hospital in its discretion may reject applications for membership, and what happened here, in effect, was that after Dr. Robinson came back and was [2529] reinstated in the society and applied for readmission to the staff of St. Mary's, his admission was turned down. Now, I concede that the hospital would not have the right to arbitrarily or for improper motive or improper reason reject an application, but I think the prima facie rejection by a private hospital does not give rise to a cause of action unless the plaintiff can show that there was some abuse of discretion, and on that basis, since there was none shown here, I think the motion should be granted as to St. Mary's, as well as the others.

The motions for dismissal will be granted and findings may be submitted in line with the rather sketchy announcement of views which I have made here, but I think they indicate my view of the evidence, oral and documentary, in this case.

Court will now adjourn. [2530]

[Title of District Court and Cause.]

CERTIFICATE OF THE CLERK

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the originals, except as otherwise designated, filed in the above cause as called for in Appellant's Designation filed on September 11, 1956.

Date of Filing & Title of Documents

May 7, 1954—Complaint.

Jan. 11, 1955—Answer of Defendants R. W. Stevens, et al.

Jan. 14, 1956—Answer of St. Mary's Hospital.

Jan. 17, 1955—Answer of Washington State Medical Assn.

Dec. 27, 1955—Motion for Change of Venue.

Feb. 23, 1956—Supplemental Affidavit in Support of Plaintiff's Motion for Change of Venue.

March 21, 1956—Answer of Walla Walla General Hospital.

March 29, 1956—Pretrial Order.

April 26, 1956—Findings of Fact and Conclusions of Law.

April 26, 1956—Supplemental Findings of Fact and Conclusions of Law relating to St. Mary's Hospital.

May 4, 1956—Judgment.

May 14, 1956—Motion for Amended and Additional Findings of Fact and Conclusions of Law.

May 22, 1956—Order Amending Findings of Fact.

May 22, 1956—Transcript of Proceedings at the Trial.

May 22, 1956—All Exhibit admitted in evidence at the trial (under separate cover).

June 20, 1956—Notice of Appeal.

June 20, 1956—Bond for Costs on Appeal.

July 13, 1956—Motion for Order Extending Time to Docket Record on Appeal.

July 17, 1956—Order Extending Time to Docket Record on Appeal to 9-15-56.

Sept. 11, 1956—Order Extending Time to Docket Record on Appeal to 9-18-56.

Sept. 11, 1956—Statement of Points on Appeal.

Sept. 11, 1956—Designation of Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Yakima in said district this 14th day of September, 1956.

[Seal]                    STANLEY D. TAYLOR,  
Clerk, United States District Court, Eastern District of Washington.

By /s/ THOMAS GRANGER,  
Deputy.

[Endorsed]: No. 15280. United States Court of Appeals for the Ninth Circuit. Miles H. Robinson, Appellant, vs. R. W. Stevens, et al., Appellees. Transcript of Record. Appeal From the United States District Court for the Eastern District of Washington, Southern Division.

Filed: Septemeber 15, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 15280

MILES H. ROBINSON,

Appellant,

vs.

R. W. STEVENS, et al.,

Appellees.

STATEMENT OF POINTS ON APPEAL

To: Mr. Edward L. Rosling,  
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Attorneys for Appellees.

You Are Hereby Notified that the appellant in-  
tends to rely upon the following points in connection

with his appeal from the judgment of dismissal entered in the District Court in the above-entitled action:

1. The Court erred in granting the motion of the appellees under Rule 41(b) to dismiss the complaint, and in dismissing the complaint.

2. The Court erred in not exercising its sound discretion under Rule 41(b) to overrule the motion to dismiss the complaint on the ground that the record in this case is so voluminous, running to thousands of pages, and the exhibits so numerous, being more than five hundred, that the purport of much of the testimony and documentary evidence could not be assayed by the Court until the Court had the opportunity to analyze and compare in a process requiring much more time than the few hours available before ruling on the motion, and because under the circumstances, the Court was not physically in a position to tell whether or not it had been established in the evidence that the appellant had proven his case, and that the motion therefore ought to be denied instead of sustained.

3. The Court erred as a matter of law in not holding that the evidence in the record made out a prima facie case that the appellees acted in a conspiracy against the appellant and that the said conspiracy was operated maliciously and unlawfully against the appellant to his damage.

4. The Court erred as a matter of law in not ruling that even if a conspiracy were not established



by the evidence in the record, there still remains relief for the appellant under negligence or simple tort on the part of some or all of the appellees on account of their malice, negligence and carelessness in instigating and proceeding with disciplinary action against the appellant.

5. That the evidence, documentary and testimonial, preponderates against the findings of the trial court.

/s/ ROBERT J. McNICHOLS,  
JOHN F. SEMBOWER,  
Attorneys for Appellant.

[Endorsed]: Filed September 27, 1956.

